

# The Gazette of India

PUBLISHED BY AUTHORITY

No. 33] NEW DELHI, SATURDAY, AUGUST 19, 1961/SRAVANA 28, 1883

**NOTICE**

The undermentioned Gazettes of India Extraordinary were published upto the 9th August 1961 :—

Issue No.	No. and Date	Issued by	Subject
200	S.O. 1868, dated 3rd August, 1961.	Election Commission, India	Amendments in the Delimitation of Parliamentary and Assembly Constituencies Order, 1956, as respects the Madras State.
201	S.O. 1869, dated 7th August, 1961.	Do.	Fixation of hours during which a poll shall, if necessary, be taken with reference to the election referred to in Notification No. 100/2/62/61(1), dated the 1st August, 1961.
202	S.O. 1870, dated 7th August, 1961.	Ministry of Law.	Appointing 16th August, 1961, on which certain Chapters of the Advocates Act, 1961, shall come into force.
203	S.O. 1871, dated 7th August, 1961.	Ministry of Information and Broadcasting.	Approval of films specified therein.
204	S.O. 1927, dated 9th August, 1961.	Election Commission, India.	Corrigenda to S.O. 1789, dated 29th July, 1961.

Copies of the Gazettes Extraordinary mentioned above will be supplied on indent to the Manager of Publications, Civil Lines Delhi. Indents should be submitted so as to reach the Manager within ten days of the date of issue of these Gazettes.

## PART II—Section 3—Sub-section (ii)

**Statutory orders and notifications issued by the Ministries of the Government of India (other than the Ministry of Defence) and by Central Authorities (other than the Administrations of Union Territories).**

### ELECTION COMMISSION, INDIA

*New Delhi, the 10th August 1961*

**S.O. 1930.**—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Order pronounced on the 18th July, 1961, by the Election Tribunal, Ludhiana at Jullundur.

#### IN THE COURT OF ELECTION TRIBUNAL, LUDHIANA

1. Shri Kartar Singh Chadha—*Chairman.*
2. Shri Badri Parshad Puri—*Member.*
3. Shri Hardayal Hardy, Advocate—*Member*

#### ELECTION PETITION NO. 14 OF 1955

Sh. Balbir Singh, son of Shri Joti Singh, Shish Mahal Bazar, Hoshiarpur—  
*Petitioner.*

#### *Versus*

(1) Sh. Amar Singh, son of Sh. Partap Singh, Railway Mandi Hoshiarpur; (2) Sh. Kartar Singh, son of Sh. Ranjha, village & P.O. Shergarh, District Hoshiarpur; (3) Sh. Prem Singh, son of Shri Kirpa, village Bassi Panj Bhayyan, P.O. Tappur, District Hoshiarpur; (4) Sh. Basanta Mal, son of Sh. Madho Mal, Mohalla Ashok Nagar, Hoshiarpur; and (5) Sh. Amar Chand, son of Sh. Hari Ram, village & P.O. Bassi Kalan, Tehsil & District Hoshiarpur.—*Respondents.*

Petition for declaring void the election of Sh. Amar Singh, Respondent No. 1 as a Member of the Punjab Legislative Assembly from Hoshiarpur Constituency in the Punjab State (Under Section 100 of the Representation of the People Act, 1951):

Shri Shamsher Singh Bedi, Advocate for the petitioner:

Sarvshri Harbans Singh Doabla, & Gurdit Singh Aulakh, Advocates, for Respondent No. 1. Shri Amar Singh. Shri Partap Singh Kafron & Master Daljit Singh, Respondents.

#### ORDER

This is an Election Petition by Shri Balbir Singh filed under Section 81 of the Representation of the People Act, 1951, as it stood before it was amended in 1956 (hereinafter referred to as the Act) to have the election of Shri Amar Singh, Respondent No. 1, to the Punjab Legislative Assembly from the Hoshiarpur Constituency, declared void and to have the said Respondent and some others, namely, Shri Partap Singh Kafron, the then Development Minister in the Punjab Government and now its Chief Minister, Shri Daljit Singh, now a Member of Parliament, Shri Hari Singh, then a Member of the Punjab Legislative Assembly and one Shri Roshan Lal, disqualified under the Act.

2. According to the petitioner, he and Respondents 1 to 5 were duly nominated candidates at the bye-election which was held in May, 1955 consequent upon the death of Pandit Jagat Ram. Respondents 3, 4 & 5, namely, 'Sarvshri Prem Singh, Basanta Mal, and Amar Chand having withdrawn their candidature within the time allowed under the Act, the election contest was between the petitioner and Respondents 1 and 2, namely, Sarvshri Amar Singh and Vaid Kartar Singh. The polling was held on 8th May, 1955 and the result was announced on 9th May, 1955. Respondent No. 1 polled 31,413 votes as against 27,770 polled by the petitioner and 4,461 polled by Respondent No. 2. As a result, Respondent No. 1 Shri Amar Singh, was declared elected and the petitioner who was defeated at the polls, has challenged the election on grounds set out in Paragraph 7 of his petition. The ground of

attack broadly is that Respondent No. 1 has been party to several major corrupt practices in connection with the election, the details of which have been set out in Clauses (i) to (xii) of Paragraph 7 of the petition and in Lists "A" to "L" attached thereto.

3. As we shall presently see, it is not necessary to give the details of the charges and the defence put up by Respondent No. 1, except to state them only briefly.

The first charge is that Shri Amar Singh, Respondent No. 1, his agents and supporters including Shri Hari Singh, M.L.A. approached Shri Prem Singh, Respondent No. 3, and promised to get him a Government job in the Education Department if he withdrew his candidature and instead supported Shri Amar Singh. This promise was redeemed and fulfilled by Shri Partap Singh Kairon, then Development Minister, Punjab and as a result of this promise, the said Shri Prem Singh did actually withdraw in favour of Shri Amar Singh. [Para 7(i)—List "A"].

The second charge is in respect of a promise of payment of Rs. 2,000 as gratification to Shri Kartar Singh Vaid, Respondent No. 2, and a promise of a Congress ticket to him from Hoshiarpur Constituency in the next General Elections as consideration for inducing him to withdraw from the election contest and thereby avoid a split among the Harijan voters of the Constituency. This again was alleged to have been done by Respondent No. 1 and his agents and supporters including Shri Partap Singh Kairon who is stated to be a friend of Shri Amar Singh. [Para 7(ii)—List "B"].

The third charge pertains to certain considerations, promises and gratifications made to Scheduled Caste voters through Shri Ramchand, President, Pasmaana Janta Party which were alleged to have been incorporated in a communication addressed to him by Shri Partap Singh Kairon with the consent and connivance of Shri Amar Singh if those voters cast their votes in favour of Shri Amar Singh and refrained from voting for Respondent No. 2 and the petitioner. [Para 7(iii)—List "C"].

The fourth charge relates to the same kind of offers, promises, considerations and gratifications made to Shri Kartar Singh Vaid, Respondent No. 2, by Respondent No. 1, his agents and supporters including Shri Partap Singh Kairon to withdraw from being a candidate and to allow his voters to cast their votes for Respondent No. 1 [Para 7(iv)—List "D"].

The fifth charge is that Respondent No. 1, his agents and supporters including Shri Partap Singh Kairon, obtained the assistance of one Labhu Ram Lambardar of Doda village for the furtherance of the election prospects of Respondent No. 1, and as consideration for the same, the area of the said Lambardar was released from certain restrictions imposed under the Forests Act and the Punjab Chose Act. [Para 7(v)—List "E"].

The sixth charge pertains to the announcement of certain concessions and the removal of certain restrictions on the grazing of goats etc. in Kandl Ilaga, at a meeting allegedly addressed by Shri Partap Singh Kairon at village Manjhi, as gratification to the voters of that area provided they voted for Shri Amar Singh. It is further alleged that the Divisional Forest Officer, Hoshiarpur who was present at the meeting was ordered by Shri Partap Singh Kairon to issue the necessary directions and that in pursuance of those orders all those restrictions were actually removed by the end of April, 1955. [Para 7(vi)—List "F"].

The seventh charge relates to the printing and publication by one Shri Daljit Singh, an alleged active supporter and agent of Shri Amar Singh, of a poster containing a wholly false statement in relation to the personal character and conduct of the petitioner, to wit, that he was a "Patit" and as such did not deserve the votes and support of members of the Sikh Community [Para 7(vii)—List "G"].

The eighth charge pertains to the installation by the Municipal authorities, of a water pump near the Sunehri Masjid, Hoshiarpur, at the instance of Shri Amar Singh who was a Member of the Municipal Committee, Hoshiarpur, in order to promote his election prospects and as gratification for the support promised to him by the voters of that area. [Para 7(viii)—List "H"].

The ninth charge is in relation to an offer made by Shri Amar Singh to refugee shopkeepers in certain areas in Hoshiarpur town to get the Municipal Committee, Hoshiarpur to construct pucca-built shops for their benefit as consideration for

their votes and support while the petitioner and the members of his party in the Municipal Committee were opposed to such construction. [Para 7(ix)—List "I"].

The tenth charge is of false personation in respect of a voter named Kishan Chand. [Para 7(x)—List "J"].

The eleventh charge relates to obtaining assistance from certain categories of servants of the Punjab Government to further the prospects of Shri Amar Singh's election. [Para 7(xi)—List "K"].

The last charge relates to Respondent No. 1, his agents and supporters having incurred certain expenditure in connection with his election in contravention of the provisions of the Act and the Election Rules and the filing of a Return of Election Expenses which was alleged to be false in material particulars. [Para 7(xii)—List "L"].

4. Respondent No. 1 in his written statement traversed the facts and grounds on which his election was called in question. He denied that Shri Partap Singh Kairon was his friend or that Shri Partap Singh Kairon and several other persons named by the Petitioner including Shri Daljit Singh were his agents and workers or that he or any one of them had committed any corrupt practice with his consent or connivance or at all. He also denied that the facts alleged by the petitioner constituted corrupt practices within the meaning of that expression as used in the Act and generally pleaded that the petition was based on false and baseless allegations. He also raised a few preliminary objections to the form of the petition and contended that the particulars of corrupt practices were inadequate and vague and as such the petition was liable to be dismissed in limine. After the petitioner had filed a Replication to the written statement of Respondent No. 1, the following issues were framed and tried as preliminary issues in the case:—

- (1) Whether the petition is defective and liable to be summarily dismissed for reasons given in Para 1, Clauses (a) to (d) of the preliminary objections in the written statement of Respondent No. 1.
- (2) Whether the allegations in the petition regarding the commission of corrupt practices lack in necessary particulars? If so, what is its effect?

By an order dated the 29th March, 1956, both these issues were decided in favour of the petitioner. None of the other respondents, filed any written statement nor did any one of them take any part in the proceedings except that Respondent No. 2 appeared as a witness on behalf of the petitioner. The same day, the following 3 issues on merits were framed and the petitioner was directed to produce his evidence in regard to these issues:—

1. Whether Respondent Amar Singh was guilty of corrupt practices alleged by the petitioner in Para 7 of the petition, the particulars of which are given in Lists "A" to "L" attached thereto?
2. If so, what is its effect?
3. To what relief is the petitioner entitled?

5. The petitioner examined 53 witnesses including himself and also produced some documentary evidence in support of his case. On 12th February, 1957, the petitioner closed his evidence and the case was there upon adjourned to 18th March, 1957 for examination of evidence on behalf of Respondent No. 1. After Respondent No. 1 had examined 19 witnesses in defence, the counsel for petitioner on 21st March, 1957 pressed his request which he had previously made in his application dated the 29th March, 1956 and which had been held in abeyance since then, that notices under Section 99 of the Act should be issued against three persons, namely, Shri Partap Singh Kairon, Shri Hari Singh and Shri Daljit Singh to show cause why they should not be named under the said Section. Of these, Shri Hari Singh had already been examined as a witness by Respondent No. 1. But the other two, namely, Shri Partap Singh Kairon and Shri Daljit Singh had not been examined either by the petitioner or Respondent No. 1. It was considered necessary in the interest of justice that they should be examined as witnesses before the question of issuing notices to them under Section 99 of the Act was decided. Respondent No. 1 having offered to examine Shri Daljit Singh as his own witness, Shri Partap Singh Kairon alone was summoned and examined as a court witness on 13th June, 1957. Respondent No. 1, however, closed his evidence on 27th August, 1957 after examining 25 witnesses including himself, but without examining Shri Daljit Singh.

6. The decision to issue notices was, therefore, taken on the basis of the evidence of petitioner's witnesses and the statement of Shri Partap Singh Kairon. By a majority order dated the 26th October, 1957 (Chairman dissenting), notices were ordered to be issued to Shri Partap Singh Kairon and Shri Daljit Singh in respect of some of the charges of corrupt practices only. The notice to Shri Daljit Singh related to the corrupt practice detailed in Para. 7(vii) of the petition read with List "G" attached thereto while that issued to Shri Partap Singh Kairon was restricted to the alleged offer of gratification made by him to one Shri Lachhu Ram at village Manjhi on April 11, 1955 and to one Shri Ram Chand of village Shergarh in a letter dated the 4th May, 1955 (Ex. P.X) which he was stated to have addressed to the latter from his camp at Hoshiarpur Rest House.

7. The order issuing these notices was indeed a turning point in the case and gave fresh impetus to proceedings which otherwise might have petered out for want of interest as in early 1957, there had been fresh elections in the country in which the petitioner and Respondent had once again entered the arena of combat. Tables were, however, turned this time and victory at the polls lay at the feet of the petitioner who was declared elected to the same seat which was previously held by Respondent No. 1. The term of office of Respondent No. 1 having thus expired before the result of the election petition could be known, the real interest in the proceedings thereafter lay in the second part of the relief claimed by the petitioner, viz to have Respondent No. 1 and the two persons to whom notices under Section 99 of the Act had been issued, disqualified.

8. Shri Partap Singh Kairon and Shri Daljit Singh challenged the validity of the order by means of writ Petitions filed by them in the High Court. After the petitions were dismissed, an unsuccessful attempt at obtaining leave to appeal to the Supreme Court was made, followed by yet another attempt to induce us to re-open some of the questions which had already been decided by the majority order passed on 26th October, 1957. Their objections in that behalf were, however, disposed of by an order dated the 10th August, 1958 and they were called upon to furnish the list of witnesses from among the petitioner's witnesses whom they proposed to cross-examine. The actual recording of evidence, however, could not commence until after a delay of 2½ years from the date of issuing of notices to them. This explains to some extent the inordinate delay in the disposal of this Election Petition.

9. From 26th November, 1959 to 10th September, 1960, Shri Partap Singh Kairon and Shri Daljit Singh cross-examined 21 out of a total number of 53 witnesses who had been examined by the petitioner and then a long list of 212 witnesses was submitted on behalf of Shri Partap Singh Kairon for their examination as his defence witnesses. Actually, however, only 29 witnesses were examined out of this list, the rest having been given up by his counsel while Shri Daljit Singh examined himself and Shri Vidya Sagar Joshi (R2-W1) as his only witness in the case.

10. Coming now to the facts of the case against Respondent No. 1, it may be mentioned at the outset that although the petitioner relied upon and produced evidence in regard to all the instances of corrupt practices mentioned in his petition, his counsel in his arguments before us did not press all and restricted himself to the allegations contained in Clauses (iii), (iv), (v), (vi), (vii), (viii) and (xii) of para. 7 of the petition only and abandoned his case with regard to the rest. The scope of the case was thus considerably narrowed down in arguments, but what remained was none-the-less the subject matter of an exceptionally keen contest between the parties.

11. *Issue No. 1.*—According to the allegations made in the petition, the charges involving Shri Partap Singh Kairon along with Shri Amar Singh, Respondent No. 1, occur before the charge in which the complicity of Shri Daljit Singh is alleged. Ordinarily, therefore, we would have dealt with the charges against Shri Partap Singh Kairon first. Learned counsel for the petitioner, however, placed the charge relating to Shri Daljit Singh in the fore-front of his arguments. We, therefore, propose to deal with the charges in the order in which they were presented to us in the arguments of the counsel.

12. The first charge dealt with by the learned counsel for the petitioner relates to the publication of a false statement of fact in relation to the personal character or conduct of the petitioner. To understand and appreciate this aspect of the case, it is necessary to refer, in some detail, to the allegations contained in the petition.

The subject matter of this charge is to be found in Clause (vii) of Paragraph 7 of the petition as amplified in List "G" attached to the petition. The allegations

broadly are that the petitioner who was a candidate of the "Beopar Mandal" at Hoshiarpur had the active support and backing of all parties opposed to the Congress which had put up Respondent No. 1 as its candidate. The constituency, it is alleged, had about, 30000 Sikh voters. Master Tara Singh the well-known Akali leader and his Organization, Akali Dal, were openly supporting the petitioner who thus stood a good chance of capturing a large number of Sikh votes.

Shri Daljit Singh (who is better known as Master Daljit Singh and will hereafter be referred to as such) belongs to a Scheduled Caste and has his ancestral house in village Bhulri, Police Station Nurpur, District Hoshiarpur. It is alleged by the petitioner that Master Daljit Singh was a Congress worker, while Shri Amar Singh, Respondent No. 1, was one of the General Secretaries of the newly formed Khalsa Dal in the Punjab. During the Shiromani Gurdwara Parbandhak Committee elections held in the year 1954, Master Daljit Singh had fought the election from Constituency No. 19 which included the present Hoshiarpur Constituency, on the Khalsa Dal Ticket. He was an active worker of Respondent No. 1 during the impugned election and was campaigning on his behalf throughout the length and breadth of the Constituency. He, with the consent and connivance of Respondent No. 1 and at his expense, in order to promote the election of the said Respondent, issued several statements supporting his candidature which were published in a Congress Daily newspaper "Naya Daur" of Jullundur.

It is further alleged that Respondent No. 1 and his agent and supporter, Master Daljit Singh, got a poster (Ex. P. 4) printed in Gurumukhi over the signatures of the latter who described himself therein as Pardhan Sarb-Hind Pasmanda Classes League (President, All India Backward Classes League) and of some other supporters of Respondent No. 1.

In the said poster, it was stated *inter-alia*, that Shri Balbir Singh (petitioner) used to be a Sikh in the beginning but by removing his "Keshas" (long hair), he had become a "Patit". The poster further stated that Master Tara Singh and the Akali Dal by helping the petitioner had disgraced the Sikh religion, and their own politics and that no self-respecting Akali of Hoshiarpur District was prepared to vote for the petitioner and that, therefore, the important workers of the Akali Jatha, Hoshiarpur, had decided to vote for Respondent No. 1.

The poster finally ended with an exhortation and appeal to the voters to cast their votes in favour of Shri Amar Singh, Respondent No. 1, who, it was claimed, was a perfect "Gur Sikh".

It is the case of the petitioner that this poster was printed at the Kuldip Electric Press, Amritsar on or about the 20th of April, 1955 and was freely distributed by Respondent No. 1, his agents and supporters, with his consent and connivance in the Hoshiarpur Constituency between the 20th April, 1955 and 7th May, 1955 and posted in almost all the towns and villages of the Constituency.

The petitioner contends that he has never been a "Kesha-dhari" Sikh, i.e., (a Sikh wearing long uncut hair) but has been a non-Sikh from his childhood and is an Arya Samajist by faith. The said statement is, therefore, alleged to be absolutely false to the knowledge of the said Respondent and his agent, Master Daljit Singh and his other supporters, and thus amounted to a major corrupt practice under Section 123(5) of the Act.

13. Respondent No. 1, in his written statement denies the correctness of the allegations made by the petitioner and avers that Master Daljit Singh was neither an agent nor a supporter of his. He denies all knowledge of the reports of speeches and statements appearing in "Naya Daur" and also denies that Master Daljit Singh had ever worked for him. Respondent No. 1 further denies having anything to do with the printing, publishing or distribution of any such poster.

14. In the written statement filed by Master Daljit Singh after notice was issued to him, he states that he had nothing to do with the election campaign of Respondent No. 1 or with the statements and reports in "Naya Daur" which were attributed to him, nor had he any hand in the printing and publication of the poster (Ex. P. 4). Although there is no express denial of the allegation that the statements made in the poster were false to his knowledge, he has generally denied that the allegations amounted to any corrupt practice.

15. The essential ingredients of the corrupt practice as envisaged in Sub-Section (5) of Section 123 of the Act are: (1) publication by a candidate or his agent or by any other person of any statement of fact, (2) that the statement of fact is false and the candidate or his agent or the other person responsible for its publication either believes the said statement to be false or does not believe it

to be true, (3) that the statement is in relation to the personal character or conduct of any candidate . . . and (4) that the said statement is reasonably calculated to prejudice the prospects of that candidate's election. Thus, in order to constitute corrupt practice, the offending statement must fulfil all these requirements of law.

The first thing which the petitioner must therefore, prove beyond doubt in order to succeed in establishing the charge of the corrupt practice against Respondent No. 1 and Master Daljit Singh is their complicity in the printing and publication of this poster. The witnesses examined by the petitioner in support of the charge are Kuldip Singh (P.W. 2), Waryam Singh (P.W. 4), Bhal Piara Singh (P.W. 6), Mela Ram (P.W. 8), Hazura Singh (P.W. 34), Niranjan Singh Singha (P.W. 36), Rakha Ram (P.W. 37), Sohan Lal Sahur (P.W. 49) D. R. Nanda P.W. 53) and the Petitioner himself as P.W. 52.

16. Kuldip Singh (P.W. 2) was the proprietor of Kuldip Electric Press, Amritsar at the relevant time. He stated that the poster Ex. P. 4 was printed at his press at Amritsar on 3rd May, 1955 at the instance of Master Daljit Singh whose name was mentioned at the foot of the poster. He further stated that 2000 copies of the poster were delivered to Master Daljit Singh on the authority of the letter Ex. P.W. 2/2 which was signed by Master Daljit Singh in his presence in token of the receipt of the posters by him. He also stated that the manuscript from which the poster was printed had been given to him by Master Daljit Singh who also paid in cash the printing charges amounting to Rs. 46/- on 9th May, 1955. He produced the counter-foil of the bill (Ex. P.W. 2/1) of which the original had been sent by him to the *Ad Hoc* Congress Committee, Amritsar. Explaining why he did not mention the name of Master Daljit Singh in Ex. P.W. 2/1, he stated that he did not so because Master Daljit Singh had been introduced by the *Ad Hoc* Congress Committee, Amritsar whose name was mentioned therein. He admitted that he personally did not know Master Daljit Singh but the latter while placing the order had referred to Mela Ram, Secretary of the *Ad Hoc* Congress Committee and that he had verified the fact from Mela Ram on phone. He, however, added that the order for the printing of the poster had been personally given by Daljit Singh and not by any-body else.

As regards the manuscript he stated that he had not brought it with himself as he could not trace it in spite of search.

This was the statement that the witness made on 9th April, 1956 before notice had been issued to Master Daljit Singh but when he appeared again on 10th September, 1960 for cross-examination at the instance of the latter, he conceded that the order for printing of the poster had been placed with his Press by the *Ad hoc* Congress Committee as recited in the bill and that the receipt on account of payment was also given in their name. Learned counsel for Master Daljit Singh also put to the witness another poster then marked "Z" and now Ex. Z and asked him if it had been printed at his Press. To this, the witness replied that although the writing underneath the poster indicated that it was printed at his Press, he could not say if it was in fact so. On further question by the learned counsel as to how he could say about the poster Ex. P. 4 having been printed at his Press when he could not say so about the poster marked "Z", the witness replied that he remembered this fact when he gave his evidence earlier, but he could not say then (i.e. on 10th September 1960) even about the poster Ex. P. 4. The witness was, however, definite that only one man had been to him for getting the poster printed and that no-body else from among the persons named under the poster had ever come to him nor had he sent any proof of the poster for correction to anybody including the person who had placed the order with him. He did not remember if he had sent the first copy of the poster to anybody and further stated that no order for printing was got signed by him from the person placing the order as it was not his practice to maintain or use any order book.

17. The next witness examined by the petitioner to prove the circumstances under which the poster Ex. P. 4 came to be printed was Mela Ram (P.W. 8), Secretary of the *Ad Hoc* Congress Committee, Amritsar. The witness appeared on 10th May, 1956, but he did not bring the documents summoned from him as they were in the custody of the General Secretary. The learned counsel for the petitioner neither examined him further nor insisted upon the production of the documents. However, in his cross examination by the counsel for Master Daljit Singh on 15th October, 1960, he stated that he did not give any order to Kuldip Electric Press for the printing of any poster like Ex. P. 4 nor did he make any payment in respect thereof. He added that the poster marked Ex. Z was the proof copy of the poster which Kuldip Electric Press had been asked to print and

that the payment of Rs. 46/- related to the poster for which the Congress Committee had received the bill Ex. P.W. 8/1. He also produced a printed copy of the poster (Ex. P.W. 8/2) which indeed is a facsimile of the poster marked Ex. Z. He also stated that the writing in Urdu Ex. Z/1 on the poster marked Ex. Z was in his hand-writing.

It was brought out in re-examination that the entry regarding payment of Rs. 46/- in the Cash Book of the Ad Hoc Congress Committee (copy placed on the record as Ex. P.W. 8/3) was the last entry on 9th May, 1955. It also came out that the working of Ad Hoc Congress Committee came to an end on 10th May, 1955. The witness further stated that the copies of the poster which had been printed at the Kuldeep Electric Press were sent by him to Shri Amar Singh, Respondent No. 1, through Master Daljit Singh and, that the proof copy of the poster had been handed over by him to the said Press from where it did not come back to him at any time thereafter.

18. The evidence of D. R. Nanda (P.W. 53), Handwriting Expert, examined by the petitioner is of little help to the petitioner. This witness was examined with the object of proving that the signature in the writing marked as Ex-PW-2/2A on the letter of authority Ex. PW-2/2 was of Master Daljit Singh. He, however, stated that the signature was not complete and certain letters were missing or abbreviated and therefore, it was not possible to give any definite and positive opinion about it but so far as comparison was possible, there were a few points of similarity between the signature on Ex. PW-2/2 and those on Exs. PW-5/1 and PW-5/3 which are the admitted signatures of Master Daljit Singh. Dr. D. N. Goyal (R.W. 24), the expert examined by Shri Amar Singh was on the other hand more emphatic in his opinion and stated that there was no similarity between the two signatures. We have examined the signatures for ourselves and have also compared the whole of the writing in Ex. PW-2/2A with the signatures on Exs. PW-5/1 and Ex. PW-5/3 and the specimen writing of Master Daljit Singh (Ex. R2/W.2/1) obtained from him before us during the course of his cross-examination by the learned counsel for the petitioner. While we have no pretensions to being handwriting experts of any kind, we have looked into the writings with a view to appreciate the evidence of the Experts examined before us. Even an ocular examination reveals marked dissimilarity between the disputed writing and the signatures marked Ex. PW-2/2A and the admitted writings. The letters "R", "P" and "D" and the word "Singh" in the two sets of writings fully reveal the difference between the two. The word "Received" in the disputed writing has been mis-spelt as "Rece-ved" and the word "Posters" has been written as "Post" which could not be expected from Master Daljit Singh who is a University Graduate. In view of all this, we agree with the definite opinion of Dr. D. N. Goyal (R.W. 24) and are satisfied that the signatures and writing marked Ex. P.W. 2/2A are not of Master Daljit Singh.

It is, however, argued by the learned counsel for the petitioner that according to the evidence of Shri Mela Ram (P.W. 8), 2000 copies of a poster were delivered by the Press to Master Daljit Singh. He contends that the posters delivered to Master Daljit Singh were no other than those like Ex. P.4, although the evidence of Shri Mela Ram is that the posters delivered were those like Ex. PW-8/2 which is the same thing as poster marked Ex-Z and the one marked as Ex. PW-6/1.

19. It is further contended by the learned counsel for the petitioner that the case set up by the Respondents about the printing of the poster marked Ex-Z is an after-thought and that the said poster was evidently got printed by the Respondents after notices under Section 99 were issued to Shri Partap Singh Kauron and Master Daljit Singh, at any rate, long after they came to learn about the Election Petition containing allegations of corrupt practice based on the Poster Ex. P.4. In this connection, he has invited our attention to the written statement filed by Shri Amar Singh, Respondent No. 1, the cross-examination of Kuldeep Singh on 10th May, 1956, the statement of Shri Amar Singh as R.W. 25 recorded on 27th August, 1957 and the cross-examination of all the witnesses examined by the petitioner in relation to the publication of Ex. P.4, viz. P.W. 4, P.W. 6, P.W. 31, P.W. 32, P.W. 34, P.W. 35 and P.W. 37. All these witnesses specifically referred in their examination-in-chief to the poster Ex. P.4 having been seen and read by them a few days before the polling day and although an attempt was made in cross-examination to show that they could not be sure about the contents of the poster, none of them was ever confronted with the poster marked Ex-Z. The petitioner himself was not confronted in his cross-examination with any such poster. Had this poster been in existence at that time, so the argument proceeded, Shri Amar Singh, Respondent No. 1, would



have surely known about it as according to the evidence of Mela Ram (P.W. 8), Master Daljit Singh had brought 2000 copies of that poster for being delivered to him. But he neither referred to that Poster in his written statement nor made any mention of it in his evidence.

Learned counsel for the petitioner has also argued that the witnesses examined by Shri Amar Singh, Respondent No. 1, in his defence Viz. Ajit Singh (R.W. 1), Hari Singh (R.W. 5), Captain Nand Singh (R.W. 13), Nidhan Singh (R.W. 14), Kulwant Singh (R.W. 15) who were particularly examined and asked if they had seen the poster Ex. P.4 displayed anywhere during the election days, also did not refer to the poster marked Ex-Z as having been seen or read by them. It was, however, on 29th December, 1959 for the first time that the poster Ex. P.W. 6/1 (which is another copy of the poster Ex. P.W. 8/1 or Ex-Z) was produced in further cross-examination of Bhai Piara Singh (P.W. 6).

20. According to the learned counsel for the petitioner, the most intriguing part of the evidence pertaining to the poster Ex-Z is in regard to the circumstances in which this poster came to be produced in court. It is clear from the evidence that the poster Ex-Z is a proof copy which Mela Ram (P.W. 8) had handed over to Kuldip Singh (P.W. 2). This document was, however, not produced in Court by Kuldip Singh although he did not deny that it was printed at his Press as it purported to be. Instead, it came from the custody of the learned counsel or Master Daljit Singh. Now, the learned counsel could have got it either from the client or from one of the witnesses. Master Daljit Singh in his evidence as R-2/W-2 denied having had any such poster in his custody or having passed on the same to his counsel for its being produced in court. His statement, on the other hand, was that although he might have met Shri Amar Singh several times during the pendency of the election petition, he did not come to know about the allegations concerning himself till he was actually served with a show-cause notice. It is then only, he stated, that he contacted Shri Mela Ram and also talked to some other workers including Shri Amar Singh to look out for the poster. He, however, discovered that copy of the poster was in the possession of Bhai Piara Singh and therefore, got it produced through him. When questioned as to why he did not try to secure the poster from Bhai Piara Singh after he had come to know about it, his reply was that he did not do so because he wanted that it should be produced in court by the witness himself. He also admitted having come to know about the poster Ex-Z being in the possession of witnesses before he filed his written statement in response to the notice issued to him; and yet he did not make any mention of it in his written statement.

21. Counsel for Shri Amar Singh and Master Daljit Singh have, on the other hand, criticised the evidence led by the petitioner on this part of his case and have strenuously argued that it does not at all establish the charge of printing of Ex. P.4 against Master Daljit Singh, nor does it prove that he did so on behalf of Shri Amar Singh. Firstly, it is argued that the evidence led is at variance with the pleadings and therefore, cannot be considered in support of the charge. Whereas the allegation in List "G" is that the poster Ex. P.4 was got printed at the Kuldip Electric Press, Amritsar on or about the 20th of April, 1955 and was distributed in the constituency between the 20th April, 1955 and 7th May, 1955, the evidence led by the petitioner is to the effect that it was printed on 3rd of May 1955 and was distributed thereafter. It is then argued that the alleged printer had failed to produce the manuscript and accounts which alone could have shown at whose instance the poster was printed by him.

The next contention is that the oral evidence of Kuldip Singh (P.W. 2) runs counter to the documentary evidence produced by him. The counterfoil of the bill (Ex. P.W. 2/1) was in the name of Ad Hoc Congress Committee and the name of Master Daljit Singh was not mentioned in it at all. If the order had been placed by Master Daljit Singh, there was no reason why the bill should not have been made out in his name. Likewise, the letter of authority (Ex. P.W. 2/2) and the receipt for payment completely belie the allegation about the printing order having been placed by Master Daljit Singh. If Master Daljit Singh was the person who placed the order for printing there was no need for him to obtain a letter of authority from the Secretary of the Ad Hoc Congress Committee for taking delivery of the posters. It is further contended that the alleged signature and writing of Master Daljit Singh on Ex. P.W. 2/2 are not genuine, and that even the Handwriting Expert, Shri D. R. Nanda (P.W. 53) produced by the petitioner is not able to give any definite and positive opinion about it. Finally, it is contended that there is no reason to disbelieve the evidence of Mela Ram (P.W. 8) supported, as it is, by the documentary

evidence Exs. P.W. 8/1, P.W. 8/2, and P.W. 8/3 which fully establish that the poster printed at the Kuldip Press was Ex-Z and not Ex. P.4.

22. There is no force in the first point urged by the learned counsel. We are not at all persuaded that there is such a great variation between the allegations contained in the particulars relating to this charge as given in the petition and the evidence led by the petitioner that it would amount to propounding a totally different case at the trial from the one set up in the petition. Reliance was placed by the learned counsel in support of his argument on the case of *Gurbanta Singh Versus Piara Ram*<sup>1</sup>, and on a Privy Council decision in the case *Saddik Mohamed Shah Versus Mst. Saran & others*<sup>2</sup>. Reference was also made to the two judgments of the Supreme Court: *Harish Chandra Bajpai & another Versus Triloki Singh*<sup>3</sup> and *Messrs. Trojan & Co. Versus R. M. N. N. Nagappa Chettiar*<sup>4</sup>. The rule of law laid down by their Lordships of the Supreme Court in the last mentioned case is that the decision of a case cannot be based upon grounds outside the pleadings of the parties and that it is the case pleaded that has to be found. The Privy Council decision is to the effect that where a claim had never been made in the defence presented by a party, no amount of evidence could be looked into upon a plea which had not been put forward. In *Gurbanta Singh's* case, their Lordships of the Punjab High Court while dealing with an election petition containing charges of bribery held that it was not open to the petitioner to lead evidence about an attempt at giving bribe when the case set up in the petition was one of actual payment of bribe. "So far as the question of pleadings is concerned", their Lordships observed, "the petitioners must be confined to the case actually set up by them in the election petition and they cannot go beyond the pleadings except after getting the petition amended provided that an amendment is permitted under the Representation of the People Act". The case of *Harish Chandra Bajpai* relates to amendment of particulars and does not directly deal with the point canvassed before us.

We cannot see how the principle enunciated in the above-mentioned cases has any application to the facts of the present case.

The petitioner in this case had no knowledge of the date on which the poster was got printed at the Kuldip Electric Press before he filed the election petition. He had come to know about its publication from some of his workers only. The poster itself did not bear any date nor could the mere fact of its publication afford the petitioner any information about the date on which it was printed. The poster was allegedly distributed throughout the Constituency. It was, therefore, not possible for the petitioner when he filed his petition to give the precise date on which it was printed and published. From the information which was in his possession, it was quite natural for him to conclude that the publication had taken place some time between the 20th April, 1955 and 7th May, 1955 when the election campaign was in full swing and if the publication occurred during that period, the printing must have taken place some time before the date of publication. It is also not understood how the mention of the date 20th April could have misled the respondents in their defence in any manner. The object of giving correct particulars as to time and place in the petition is to afford the opposite party proper notice of the case which he is required to meet. Now in this case, it is not alleged by either side that more than one poster was got printed from the Kuldip Electric Press, Amritsar in connection with this bye-election. How many days before the date of polling the said poster was got printed, might be material for the purpose of determining the effect which it was likely to produce on the mind of the electorate or for the purpose of ascertaining the intention of the persons responsible for its printing and publication. It certainly has no bearing at all on the question as to whether the poster printed was Ex. P.4 as alleged by the petitioner and if so, who got it printed. We, therefore, repel this argument of the learned counsel and hold that the failure of the petitioner to mention in the petition the correct date of printing of the poster neither amounts to setting up a new case at the trial so as to justify rejection of his evidence *in toto* nor does it vitiate the charge.

23. There is, however, a great deal of force in the other three points urged before us. When *Kuldip Singh* (P.W. 2) was first examined as a witness in this case, his printing press was still functioning. He, however, did not produce the

<sup>1</sup>A.I.R. 1960 Punjab 614.

<sup>2</sup>A.I.R. 1930 P.C. 57.

<sup>3</sup>12 F.L.R. 461.

<sup>4</sup>A.I.R. 1953 S.C. 235.

original manuscript from which Ex. P.4 was got printed and stated that he had searched for it but had not been able to find it. When he appeared for the second time, he stated that his press had ceased to function. He denied that he had obtained any written order or signature from the person placing the order with him and stated that this was not his practice. He obviously knew the language and the script in which the poster was printed and as the order for printing was placed with him personally, it stands to reason that he read the manuscript before he accepted the order. Now even a cursory reading of the poster must have brought to his notice the objectionable nature of its contents. Being a man in the printing trade, it is hard to believe that he was not aware of his own responsibility in printing such matters. The least amount of care that one would expect of a printer in such circumstances, is to obtain the signature and writing of the person placing the order with him and to take the precaution of preserving the manuscript. We know, that that would not have exonerated him from his liability in law for printing objectionable matter but it would have certainly lightened his burden to some extent or would have, at any rate, established his good faith. Kuldip Singh according to his statement, did not know Master Daljit Singh who, as he says, was introduced to him on telephone by Shri Mela Ram. It is, therefore, highly improbable that he would accept an order for printing a poster like Ex. P.4 from an utter stranger without obtaining any order in writing from him. It is not his evidence that he accepted the order on the responsibility of Mela Ram or that he was induced by Mela Ram in any manner to accept the order. The next circumstance which according to our way of thinking is wholly incompatible with his earlier statement in examination-in-chief is the preparation of the bill (Ex. P.W. 2/1) in the name of the Ad Hoc Congress Committee and the letter of authority (Ex. P.W. 2/2) addressed to him by Shri Mela Ram wherein he was asked to deliver 2000 printed copies of the poster to Master Daljit Singh. Kuldip Singh does not say that although the order for printing was placed with him by Master Daljit Singh and the printing charges were also paid to him by the latter, he was asked by anyone to make out a bill and a receipt in the name of the Ad Hoc Congress Committee. He also does not explain why it became necessary for Master Daljit Singh to produce the letter of authority Ex. P.W. 2/2 when the order for printing had itself been placed by Master Daljit Singh and the printing charges were also paid by him.

It seems to us that the true import of these circumstances became apparent to his mind only later on when he appeared again for his cross-examination on 10th September, 1960 and then he staged a complete *volte-face*, and stated that the order for printing of the poster had been placed with him by the Ad Hoc Congress Committee as recited in the bill and that the receipt for printing charges was also given in its name. He further stated that he did not even remember if the poster Ex. P.4 had at all been printed at the Press. This statement of the solitary witness examined by the petitioner on the point should by itself be sufficient to destroy the case set up by him. All that the learned counsel for the petitioner could say in regard to the statement of the witness was that he had been prevailed upon to make this concession in favour of the respondents. There is nothing on the record to justify such an assumption.

24. We are also not impressed by the argument of the learned counsel for the petitioner that the poster marked Ex-Z was got printed by the respondents after they came to know about the election petition containing allegations of corrupt practice based on the poster P/4, nor are we intrigued by the manner in which poster Ex-Z was produced in Court. In our opinion, it was not at all necessary either for Shri Amar Singh or for Master Daljit Singh to refer to the poster marked Ex-Z in their written statements. In their written statements, they were merely required to admit or deny the allegations contained in the petition and were not bound to say anything more. It was also not necessary for Shri Amar Singh to put to the petitioner's witnesses the poster marked Ex-Z. In his cross-examination of the petitioner's witnesses, his attempt was to show that their evidence about their having seen posters like Ex. P.4 could not be relied upon as it was not possible for any one to remember which particular poster had been seen by him in the course of election campaign when a large number of posters were being displayed and exhibited by the candidates concerned.

It is also not permissible for the learned counsel for the petitioner to take advantage of only that part of the statement of Shri Mela Ram (P.W. 8) which showed that Master Daljit Singh had brought 2000 copies of a poster for being delivered to Shri Amar Singh when he was not prepared to accept the rest of the statement of the said witness especially when the witness had been produced by the petitioner himself. Likewise it was not necessary for Shri Amar Singh

to have put the poster marked Ex-Z to his witnesses in defence. In any case, the omission is not such as would compel us to raise an inference against him and to hold that the poster marked Ex-Z was not in existence at the time.

It is true that there is a certain amount of confusion about the manner in which the posters, Exts. P.W. 6/2, P.W. 8/2, and Ex-Z (which are all alike) were produced in court, but the very fact that they were exhibited as "P.W. 6/1" and "P.W. 8/2" would go to show that they were produced by the witnesses themselves in cross-examination and not by the respondent or their counsel. If the documents were in the possession of the witnesses, they could not have been produced earlier by the respondents. There is also nothing strange about the production of the poster marked Ex-Z. According to the case of the respondents, such a poster was got printed by the *Ad Hoc* Congress Committee, Amritsar to promote the election prospects of Shri Amar Singh while the name of Master Daljit Singh appear on it as one of its publishers. The poster was, therefore, in the possession of the counsel for Master Daljit Singh and was shown by him to Shri Kuldip Singh (P.W. 2) when he appeared for his further cross-examination on the 10th September, 1960. We fail to see anything strange or anomalous about it.

Giving the matter our most careful consideration, the conclusion reached by us is that in the absence of any independent evidence it is not possible for us to accept the vacillating testimony of Kuldip Singh alone to hold that the poster printed at the Kuldip Electric Press and referred to in the bill Ex. P.W. 2/1 was Ex. P/4 and that it was got printed by Master Daljit Singh. We cannot believe that no order in writing was obtained from the person who placed the order for printing with Kuldip Singh nor do we feel satisfied that the original manuscript of poster had been lost. We have indeed a feeling that it was being deliberately withheld from us as its production would have damaged the case of the petitioner.

25. Learned counsel for the petitioner when faced with these difficulties, sought to draw support from the evidence relating to certain statements, reports and news-items which appeared in an Urdu daily newspaper called "Naya Daur". This paper was being published from Jullundur under the patronage of Giani Gurmukh Singh Musafir, then President of the Punjab Pradesh Congress Committee and a member of Parliament and was evidently espousing the cause of Shri Amar Singh who had been set up as a candidate by the Congress Party. According to the petitioner, Master Daljit Singh issued a number of statements to the Press supporting the candidature of Shri Amar Singh and also addressed several meetings at which he made speeches. Reports of these statements and speeches are alleged to have been published in the said newspaper. The allegations contained in Ex. P/4 were repeated in a statement allegedly issued by the Secretary, Shiromani Khalsa Prabhak Committee and published in that paper. This according to the learned counsel for the petitioner establishes a link between Master Daljit Singh and Ex. P/4.

Shri Amar Singh admitted his connection with "Naya Daur" to some extent in stating in his cross-examination that the paper was supporting him in the Bye-election and that he had paid a sum of Rs. 215 for the copies of that paper which he had been receiving in those days, some of which were also distributed.

26. The petitioner examined Shri Wazir Chand (P.W. 30) and Shri Sohan Lal Sahir (P.W. 49) both of whom were connected with the newspaper at the relevant time. Shri Wazir Chand was its Editor from March, 1954 to 30th April, 1955 while Shri Sohan Lal was its Editor-in-charge from November, 1954 to June, 1955. Shri Wazir Chand stated that in the Hoshiarpur Constituency Bye-election, 1955, his paper supported the candidature of Shri Amar Singh and that the news regarding his election campaign were also being published in the paper. These items of news were being received from the special correspondents or the paper at Hoshiarpur and also from the Hoshiarpur Congress Election Office on telephone or by telegram. He produced several issues of the paper dated 1st May 1955, 23rd April 1955, 21st April 1955 and 28th April 1955 containing news regarding the election campaign of Shri Amar Singh which were marked Exts. "A", "B", "C", & "D" while the news items were separately marked Ex. A1 to A6 in 'A', B1 to B3 in 'B', C1 to C4 in 'C' and D1 to D6 in 'D', all of which he said, were published in his paper and no contradiction had been received in regard to anyone of them from any source. He also produced an issue of the paper dated 16th April, 1955 which was marked as Ex. "W" while the news-item contained therein was marked as "W-1". All these documents were, however, brought on record subject to our decision as to their admissibility later on.

In his cross-examination, he maintained that all these news were published under his Editor-ship and that the manuscripts relating to the same were not preserved for more than 48 hours, this being a common practice among all papers. He further stated that Master Daljit Singh had visited him in his office in March, 1955 in connection with this Bye-election and had asked him for his support in that connection. It is however difficult to believe this bald statement of the witness.

Shri Sohan Lal (P.W. 49) stated that he was Editor-in-Chief of the "Naya Daur" Jullundur from November, 1954 to June, 1955. He too, admitted that "Naya Daur" was a pro-Congress paper and produced some of its copies marked Exs. P/21 to P/23.

27. All these documents were relied upon by the learned counsel for the petitioner as affording evidence of the various activities of Master Daljit Singh in connection with the election campaign of Shri Amar Singh during the bye-election in dispute. He further argued that the repetition of the allegations contained in Ex. P.4 in the issue of "Naya Daur" dated 5th May, 1955 (Ext. P/23) clearly established that the poster Ex. P/4 was got printed by none else except Master Daljit Singh as one of its publishers. It is further pertinent to observe in this connection that Ex. P.23 does not refer to Master Daljit Singh at all. It purports to be the report of a statement dated 3rd May, 1955 issued by the Secretary, Shiromani Khalsa Bradri Prabandhak Committee with which Master Daljit Singh has not been shown to have had any connection at all.

28. We shall now deal with the objection regarding admissibility of these documents. The argument of the learned counsel for the respondents is that in the absence of the correspondents and other persons who are alleged to have sent out the news and the reports published in these news-sheets, the statements appearing therein are merely hear-say evidence which is not admissible in law. The learned counsel for the petitioner on the other hand relied upon Section 81 of the Indian Evidence Act. The said Section is, in our opinion, of no assistance to the learned counsel at all. It merely lays down that the Court shall presume the genuineness of every document purporting to be a newspaper or journal if such document is kept substantially in the form required by law and is produced from proper custody. This is something entirely different from the point raised by the learned counsel for the respondents. His objection is not to the genuineness of the copies of the "Naya Daur" produced before us, but to the correctness of the contents of the news items and reports appearing therein. No authority has been cited by the learned counsel for the petitioner in support of his argument. On the other hand, the contention urged by the learned counsel for the respondents is fully supported by several authorities. The first case is a judgment of Tek Chand J. of the Punjab High Court in the case "*Harbhajan Singh Vs. The State of Punjab*". This is what his Lordship says:

"Section 81 of the Indian Evidence Act lays down that court shall presume genuineness as to gazettes, newspapers, etc. if such a document is produced from proper custody. The presumption of genuineness attached under this Section to a newspaper cannot be treated as proof of the facts reported therein as a statement of a fact contained in a newspaper is merely hearsay and therefore, inadmissible in evidence in the absence of the maker of the statement appearing in Court and deposing to have perceived the fact reported".

29. To the same effect is the decision of the Mysore High Court where a Division Bench of that High Court in the case of *Sangappa Versus Shivamurthiswamy*<sup>6</sup> observed as follows:—

"Reliance was placed lastly on Ex. P. 48(c) of a newspaper report in Thungabhadra dated February 14, 1957, in which it was reported by the Yelburga correspondent of that newspaper that at a meeting of Congress workers at Yelburga Taluk, Gururao Desai was one of those present and that in that meeting the impending elections were also discussed among other matters".

"It is clear that even if Gururao Desai was present in that meeting, it does not amount to his having taken part in any election propaganda on behalf of the Congress much less can it amount to the procuring or

<sup>5</sup>A.I.R. 1961 Punjab 215 at 221.

<sup>6</sup>A.I.R. 1961 Mysore 106 at 116.

the obtaining of his assistance by the appellant. Further, the newspaper report cannot be treated as substantive evidence. The correspondent who made that report is not examined and the mere fact that a report appears in a newspaper to that effect cannot amount to evidence on which the respondent can rely to support his charge."

30. The view taken by a Division Bench of the Lahore High Court in the case of *Bawa Sarup Singh Versus the Crown*<sup>7</sup> was also the same. In that case the prosecution in support of its case that the accused were Members of the Shiromani Gurdwara Parbandhak Committee which had been declared an unlawful association under the Criminal Law Amendment Act, 1908 and had in that capacity attended a certain meeting, relied upon a paragraph contained in an issue of the newspaper known as "Akali-te-Pardesti" which gave the names of some of the persons who were re-elected as Members of the S.G.P.C. The Sessions Judge while dismissing the appeal had relied upon the copy of the newspaper as establishing the presence of the accused at the meeting. While allowing the Revision Petition filed by the accused in the High Court, Fforde J. with whom Scott-Smith J. concurred observed as follows:—

"The Sessions Judge, however, has relied upon these documents as establishing the presence of the petitioners at the meeting of the 7th January, 1924. He refers to these newspapers as follows:—

"That they (the petitioners and others) are all members of the S.G.P.C. is proved by their names having been published in P.N., P.N. 1, P.N. 2 and P.N. 3". Apart from the fact that this is not a correct statement, in as-much as the first newspaper does not contain the names of any of the petitioners, the second newspaper contains the name of Bawa Sarup Singh alone, and the fourth newspaper makes no mention of the petitioners names at all, it should be obvious that even if the newspapers referred to are admissible in evidence without formal proof the paper itself is not proof of the contents. It would merely amount to an anonymous statement that the petitioners have been elected members of the S.G.P.C. This type of hearsay evidence is obviously inadmissible in a court of law and it should not have been necessary to point out that such evidence is legally inadmissible".

31. Learned counsel for the petitioner then argues that in view of the fact that "Naya Daur" was a pro-Congress paper which was propagating the cause of Shri Amar Singh, who was one of its subscribers and had been distributing its copies, and both he and Master Daljit Singh did not contradict the news and reports appearing therein, nor did they ever that they were ignorant of what was being printed therein, this paper should be regarded as an agent of Shri Amar Singh. Basing himself on the observations of Blackburn J. in Wakefield's case as reproduced in Rogers on Elections (Twentieth Edition Vol. II-P. 391), the learned counsel contends that agency in Election Law has a wider significance than under the ordinary law of Principal and Agent and can be inferred from circumstances and conduct. There can be no quarrel with the above proposition of law, so far as it relates to agency in elections but that cannot help the petitioner's case. In the first place, there is no such allegation in the petition or in the particulars attached to it. Secondly, the facts and circumstances relied upon by the learned counsel for the petitioner are not sufficient to enable us to uphold his contention. In the case of *Mathai Mathew Manjuran Vs. K. C. Abraham*<sup>8</sup>, the Managing Director of the newspaper concerned was the President of the Provincial Congress Committee while its Editor and Publisher was a prominent Congressman. The paper was actively canvassing support for Congress candidates through editorials, reports, circulars and advertisements, and was receiving donations from the Congress. It was held that these facts were not sufficient to make that newspaper or its Editor an agent of the candidates put up by the Congress.

This case was cited with approval by the Punjab High Court in a recent case *"Amir Chand Vs. Sucheta Kriplani"*<sup>9</sup>. Besides, the real question that we have to decide is whether the news-items and reports appearing therein can be used as evidence to establish that the poster Ex. P. 4 was got printed by Master Daljit Singh with the consent or connivance of Shri Amar Singh. On that point the dictum of Blackburn J. can, in our opinion, be of no help to the petitioner.

We, therefore, agree with the learned counsel for respondent and hold that the reports appearing in the newspaper "Naya Daur" cannot *per se* be treated as

<sup>7</sup>A.I.R. 1925 Lahore 299.

<sup>8</sup>X E.L.R. 376;

<sup>9</sup>XXI E.L.R. 286;

evidence for the purpose of proving the statements, speeches and activities of Master Daljit Singh nor do they connect him in any way with the poster, Ex. P. 4.

32. Learned counsel for the petitioner next contends that even after discarding the evidence furnished by the newspaper reports, there is sufficient reliable evidence on the record to establish Master Daljit Singh's active interest in the election of Shri Amar Singh and his participation in the election campaign which would make him in law an agent of Shri Amar Singh, Respondent No. 1. In this connection, he relied upon the evidence of Shri Waryam Singh (P.W. 4), Bhai Piara Singh (P.W. 6), Shri Wazir Chand (P.W. 30), Shri Narinjan Singh Sangha, Advocate (P.W. 36), Shri Rakha Ram (P.W. 37) and Shri Balbir Singh petitioner, all of whom deposed to having seen Master Daljit Singh canvassing support for Shri Amar Singh. The above evidence of these witnesses also finds some support from the Return of Election Expenses filed by Shri Amar Singh which contained entries regarding two bills for Rs. 14 each paid by Shri Amar Singh on account of loud speaker charges which were shown to have been used by Master Daljit Singh in connection with the election campaign of Shri Amar Singh. Both these bills were put to Shri Amar Singh in his cross-examination and he admitted having made the payments entered therein. In the face of this evidence it is not possible to believe the statement of Master Daljit Singh that he had nothing to do with the election campaign of Shri Amar Singh or that he did not take part in the bye-election of 1955 as he would have us believe. But more'ly because he canvassed votes on behalf of Shri Amar Singh or addressed some meetings for the purpose, would not, in our opinion, make him an agent of the latter or make Shri Amar Singh responsible for everything that he did.

33. We now turn to the evidence regarding publication of the poster (Ex. P. 4). P.Ws. 4, 6, 31, 32, 34, 36, 37 and 52 gave evidence to the effect that they had seen and read it at different places. P.W. 4, Waryam Singh saw the poster affixed to the wall in front of his shop on Railway Road, Hoshiarpur about 4 days before the day of polling. He has a strong grouse against Shri Amar Singh because he refused to pay him more than Two Thousand Five Hundred Rupees which he alleged to be due to him on account of certain articles alleged to have been supplied to Shri Amar Singh and his workers during the election. He also admitted that he had attended a meeting of the workers of the petitioner at which the petitioner asked his workers to supply material for filing the election petition. It is also significant that although he did not remember what posters, if any, had been seen by him in favour of the petitioner, nor could he say whether those posters were issued by an individual or a society, yet he remembered having seen and read Ex P.4. He is thus an interested witness whose evidence cannot be accepted in a case like this. Bhai Piara Singh P.W. 6 first stated that he had seen posters like Ex. P.4 affixed at numerous places at Hoshiarpur, namely, courts, buses, Kotwali and bus stands. He also stated that as far as he could remember he had also seen such a poster affixed to a jeep standing near the Tehsil compound with several persons including Shri Amar Singh and Master Daljit Singh sitting in the jeep. The witness however turned turtle and had an altogether different story to tell when he appeared again for cross-examination. This time, he stated, it was quite a different poster (P.W. 6/1) which he had seen affixed to the jeep and not the poster Ex. P.4. His statement therefore cannot advance the petitioner's case. Hazura Singh P.W. 31 stated that he had seen posters like Ex. P.4 affixed at several places in his village Bassi Daulat Khan. He had also seen such posters in another village and in the town of Hoshiarpur. In cross-examination he admitted that he had seen several other posters in his village relating to other candidates but he did not read any one of them. He neither removed the poster from the wall nor did he show it to the petitioner. He also did not remember when he met the petitioner after he had seen the poster. He was arrested in connection with the Punjabi Suba Movement and although he denied his connection with the Akalis or any other political party in any way, it was not difficult to discern where his sympathies lay. Balwant Singh P.W. 32 saw posters like Ex. P.4 affixed at several places in Hoshiarpur but when he appeared again, it was apparent that that he was no longer prepared to stick to his earlier statement. He stated that he himself had not read any poster like Ex. P.4. He had only seen those posters from a distance and all that he could see was the name of Shri Amar Singh in bold print and the picture of two bullocks. Both these features apply to poster Ex. Z as well.

P.W. 34, Vaid Kartar Singh, is patently an interested witness. His evidence, as we shall have occasion to examine it at some length in connection with another charge in this case, is the evidence of a witness on whom no reliance can be placed at all. He has not impressed us a reliable and truthful witness and we are not at all prepared to accept any portion of his statement.

P.W. 36, Narinjan Singh Singha, an Advocate, stated in his examination-in-chief, that he had seen posters like Ex P.4 exhibited at several places during the election days. But when appeared again for further cross-examination on 29th December, 1959, he seemed to be anxious to make himself as helpful to the respondents as he could. Being a seasoned lawyer, he was of course, not prepared to go back on what he had said before; but he was astute enough to make such concessions in their favour as would considerably weaken the effect of his evidence. In fact, on points on which he had not committed himself before, he was tractable enough to say things which the Respondents could not have got from their other witnesses. No reliance can, therefore, be placed on any part of the statement of such a witness. The evidence of Rakha Ram P.W. 37 is equally unsatisfactory. It is rather strange that he should know about Ex P.4. when he did not know anything about other posters. In further cross-examination, he too conceded that he did not have any clear idea about the contents of the poster. Petitioner's own evidence being of a partisan character cannot be accepted, more so when it is considered that although according to him the poster had led several Sikh voters to make inquiries from him about his being a "Patit" and he was put to the necessity of holding several meetings to counter-act its effect, he did not produce a single witness from among those who made inquiries from him or attended any such meetings. It is surprising that none of these witnesses including the petitioner cared to remove any such poster from any of the places where they allege to have seen the same affixed, for producing it in court. Such conduct is wholly unnatural particularly on the part of the petitioner himself.

This is hardly the kind of evidence which can carry conviction with us in a case where the test for weighing evidence is generally similar to the one applied in criminal trials.

34 The final submission of the learned counsel for the petitioner on this point is that the poster itself contains the name of Master Daljit Singh as one of its publishers. He is proved to be an active worker of Shri Amar Singh. As such he could not have been ignorant about its publication under his name and since he did not take any steps to contradict the imputations made therein, it is a circumstance which establishes his connection with the poster. It has also been urged that instead of explaining the circumstances under which his name came to be associated with the poster he made a false statement denying all connection and concern with the election of Shri Amar Singh. There is no doubt that the statement made by Shri Daljit Singh is not true and we have said so before, but is that a reason for holding that the poster was got printed and published by him? Apparently, innocent persons often resort to falsehood while defending themselves in court. A man may do or omit to do something which he then knows to be neither an offence nor something wrong. Subsequently doubt is cast on the correctness or propriety of what he had done before. Legal proceedings are threatened or started in respect of that very act or omission. To defend himself against the charge he resorts to falsehood or does something else which may not find favour with the court. Is he to be condemned merely because he either lost his head or was ill-advised to take up a particular defence? In our opinion, not. The charge against him must stand or fall on its own strength or weakness and cannot be allowed to be buttressed by infirmities in the Respondent's defence. Falsity of defence may tilt the balance against him to a slight extent but not that it should take the place of positive evidence which alone, in our opinion, can sustain conviction on such a charge.

35. Our conclusion therefore is that the petitioner has not been able to prove beyond reasonable doubt that there was publication of the poster Ex. P.4 by Shri Amar Singh or by any of his agent, workers and supporters or by any other person with his consent or connivance. We are satisfied that the order for printing was placed with Kuldip Singh by the Ad Hoc Congress Committee, Amritsar and not by Master Daljit Singh, that the printing charges as evidenced by P.W. 8/1 were also paid by the Ad Hoc Congress Committee and not by Master Daljit Singh and that there was nothing suspicious about the cash book entry (Ex. P.W. 8/3) produced by Mela Ram. The Ad Hoc Congress Committee having ceased to function after 10th May, 1955, there was nothing strange in the entry regarding payment of Rs. 46 being the last entry in the book. We are also satisfied that the poster referred to in these documents was Ex. P.W. 8/2 of which the poster marked Ex-Z was the proof copy. Even if there be some doubt in this respect which of course is not our finding, we would still hold that on the evidence placed before us, the printing and publication of the poster Ex. P.4 by Master Daljit Singh has not been proved, much less with the consent or connivance of Shri Amar Singh.

36. As we have come to the conclusion that the petitioner has failed to prove the complicity of Shri Amar Singh and Master Daljit Singh in the printing and



publication of the poster, the last argument of the learned counsel for the petitioner about the legal effect of the imputations contained therein need not be noticed at great length. There is no doubt that the petitioner was at no time a "Keshadhari Sikh" i.e. a Sikh wearing long uncut hair; that he was in fact an Arya Samajist, a sect which does not believe in any such practice. The evidence also shows that this fact was within the knowledge of both Amar Singh and Master Daljit Singh. They therefore knew that the allegation about his being a "Patit" Sikh, i.e. a Sikh who had got his hair removed, was false and they could not have believed it to be otherwise. They also knew that this was a false imputation concerning the personal character or conduct of the petitioner as an imputation like this carried with it the stigma that he was an apostate from Sikhism and was indeed a man lacking in stead-fastness and constancy in the matter of observance of essential religious practices and symbols. It also does not need much argument to convince anyone familiar with the religious susceptibilities and sentiments of those who follow the orthodox Sikh faith that the word "Patit" has its own peculiar connotation which is abhorrent to the sentiments of a large majority of Sikhs. An imputation like this is therefore highly mischievous and offensive and it is idle for the learned counsel for Respondents who themselves happen to be the followers of that faith, to contend that a statement of that nature published in a poster during an election from a constituency which had about thirty thousand Sikh voters was not reasonably calculated to prejudice the election prospects of the petitioner.

37. Learned counsel for the respondents have drawn our attention to certain passages in the evidence of several witnesses examined by the petitioner and have tried to argue that they all knew that the petitioner had at no time been a follower of Sikh faith and that he was known all round as a Hindu. There was, therefore, absolutely no possibility of any one mistaking him for a "Patit" Sikh. They also argued that there was not even an iota of evidence on the record to prove that any vote had been deflected as a result of this imputation or any supporter or worker of the petitioner withdrew his support or association from his cause on that account. The evidence on the other hand is that no body paid any serious attention to the allegation and the only person who had complained about it is the petitioner himself. He too has done it only now as a convenient weapon of attack against the respondents, otherwise, there is nothing in his conduct at the relevant time that he showed even the least resentment about it or paid any heed to it.

Learned counsel for the Respondents have referred in this connection to certain decisions of Election Commission and also to a recent judgment of the Punjab High Court. The first case relied upon is of *Jawand Singh Versus S. Ujjal Singh*<sup>(10)</sup> a decision of the First Election Petitions Commission, Punjab. The offending statement in that case related to Dr. Tehl Singh, the defeated candidate, and was published in a poster issued by the Khalsa Election Publicity Committee, Gujranwala in which it was stated that their query regarding the removal of hair by Dr. Tehl Singh when he was in England, had remained un-answered and that the omission of the word "Singh" from his name seemed to support the suggestion that he had had his hair removed. It was contended that the publication of the statement regarding removal of hair by Dr. Tehl Singh offended against Paragraph 5, Part 1 of the First Schedule to the Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order, 1936, the provisions of which were identical with those contained in Section 123(5) of the Act. Dealing with the point as to whether the statement was reasonably calculated to prejudice the prospects of Dr. Tehl Singh's election, the learned Commissioners observed as follows:—

"We are not concerned with the personal views of Sardar Bahadur S. Mehtab Singh in the matter, but have to consider how a reasonable man of ordinary prudence would be affected by the statement in question in view of all the surrounding circumstances. The publishers of the statement presumably intended that it would affect the prospects of Dr. Tehl Singh prejudicially, but we have to decide whether it was reasonably calculated to have that effect, which means whether such an effect would be produced on the average voter in the constituency who considers the matter in a reasonable manner. After the most careful consideration of all the circumstances enumerated above and the entire evidence in the case, we are of opinion that the statement in question was, in this particular case, not reasonably calculated to prejudice the prospects of Dr. Tehl Singh's election, and does not, therefore, come within the purview of paragraph 5, part 1 of the First Schedule in the Government of India (Provincial Election) (Corrupt Practices and Election Petitions) Order, 1936".

(<sup>10</sup>) Indian Election Cases (1935 to 1950) by Doabia, Vol. II, 211.

The learned Commissioners however had no doubt that the statement related to the personal conduct of Dr. Tehl Singh which called for strong condemnation.

38. The next case "Subedar Major Ganda Singh and others Versus Mr. C. Rai, Bar-at-law"<sup>(11)</sup> is also a decision of the First Election Petitions Commission Punjab. The false statement in that case was that the petitioner was neither a Hindu nor a Sikh but a time server and that it was rumoured some time ago that he was about to become a Mohamadan. The decision against the petitioner in the case was purely on the peculiar facts of that case and does not lay down any law which can be of help in the decision of other cases.

39. The last case relied upon is a recent judgment of the Punjab High Court in the case of *S. Mehr Singh Versus Shri Umrao Singh and another* <sup>(12)</sup> where it was alleged in a poster that the Raja of Faridkot was that same Raja who had collected the goods of Mohammadans and set fire to them so that the poor displaced persons from Pakistan might not put them to use. It was held by their Lordships (Faihsow and Gurdev Singh JJ.) that the allegation was made against His Highness the Raja not in his personal capacity but as the Ruler of the State and thus the offending passage could not be held to be in relation to the personal character of His Highness the Raja of Faridkot. It was also held that since the appeal in the poster was addressed to a very limited section of the community, it was not a statement reasonably calculated to prejudice the prospects of his election.

Frankly speaking, we have not been able to appreciate why this case was cited at all by the learned counsel for respondents. The judgment has no bearing whatsoever on the facts of the present case unless it be for the doubtful purpose of showing that since an appeal made to the "Bazigars" in that case was held by their Lordships to be an appeal to "very limited section of the Community" by the same process of reasoning, an appeal to "Sikhs" should also be treated as one made to a "limited section of the public" only. But such an argument can hardly prevail in this case considering that the number of Sikh voters in the Constituency was stated to be about thirty thousand. This is by no means a "very limited section of the community".

40. In our judgment, the test in each case is not what prejudicial effect the false statement actually had on the election prospects of the maligned candidate nor whether he actually lost any votes or support as a result of the false statement. The test really is whether looking at the matter from the point of view of an average voter in the Constituency who considers the matter in a reasonable manner, the statement is such as would affect the mind of such voter to the prejudice of the candidate whose character or conduct has been vilified. Neither the intention of the person making the false statement, nor the sensibilities of the candidate who has been maligned are by themselves a decisive factor.

41. The next two instances of the major corrupt practices on which the learned counsel for the petitioner concentrated his attention, are to be found in clauses (iii) and (iv) of Para 7 of the petition. The relevant lists where the particulars of these allegations have been set out are "C" and "D". The allegations in List "C" are that on 4th May, 1955, Shri Amar Singh, Respondent No. 1, and at his instance Shri Partap Singh Kairon, then Development Minister, Punjab, and Shri Hari Singh, M.L.A., Hoshiarpur approached one Ram Chand of Shergarh in his capacity as President of the Pasmanda Janta Party, which had set up Vaid Kartar Singh, Respondent No. 2, as its candidate and induced him and a very large number of voters under his influence by offering him and other Harijan voters individually, gratification, consideration and promises many of which are contained in a Gurmukhi letter written by Shri Partap Singh Kairon and addressed to Shri Ram Chand (Ex. P.X) to cast their votes for Shri Amar Singh and to refrain from voting for Vaid Kartar Singh and the petitioner. This letter was written by Shri Partap Singh Kairon in his own hand, placed in an official envelope (Ex. P.Y.) and was conveyed to Shri Ram Chand by hand. The letter is alleged to have contained the following promises and gratifications to the Harijan voters of Hoshiarpur Constituency:—

"(a) That the period of reservation of seats in the Legislatures for Scheduled Castes would be extended beyond the period provided in the Constitution;"

"(b) That Banjar and un-allotted un-cultivated evacuee lands would be given to the Harijans;"

(11) Indian Election Cases (1935 to 1950) by Doabia, Vol. II, 95.

(12) (1961) 63 P.L.R. 39 at 51.

- “(c) That cultivated allotted evacuee lands not taken possession of by the allottees would be given to the Harijans free of any rent;”
- “(d) That 21 per cent of reservation would be given in the Ilaga for Harijan voters in consideration of their votes for Respondent No. 1 and the Harijan voters would be given the first posts preferentially;”
- “(e) That restrictions under Section 38(a) of the Forest Act would be relaxed in favour of the Harijan voters;”
- “(f) That individual school going children of Harijan voters would be exempted from payment of school fees despite their failure in the examination for the first time contrary to the prevalent rule-s.”

42. The allegations in List “D” are closely connected with those in List “C”. It is stated that on 4th May, 1955, Shri Amar Singh and his agents and supporters Shri Partap Singh Kairon and Hari Singh, M.L.A. made all the promises, offers, considerations and gratifications contained in List “C” to Vaid Kartar Singh provided he withdrew from being a candidate at the election and allowed his voters to vote for Shri Amar Singh. Vaid Kartar Singh however did not agree to these offers and continued to remain a candidate..

It is further stated that Shri Amar Singh and several of his agents and supporters among the Harijan voters of the constituency thereupon issued a poster (Ex. P.5) in Urdu at the expense of Shri Amar Singh under the heading “Deception by Vaid Kartar Singh, candidate for the Assembly upon the workers of the Pasmanda Janta Party and Harijans”.

The poster starts by saying that the Pasmanda Janta Party had put up Vaid Kartar Singh as its candidate with the object of getting the legitimate demand of Harijans satisfied by the Punjab Government. Vaid Kartar Singh however instead of focussing his attention on these demands had entered into a private arrangement with Ch. Balbir Singh petitioner to make him successful in the election and had begun to mislead the Harijan voters. To ponder over this state of affairs a general meeting of the workers of the party was held on 5th May, 1955 at which certain demands were formulated and addressed to the Ministers of the Punjab Government. At the meeting it was also decided that if the Punjab Government agreed to the demands, the party would withdraw Vaid Kartar Singh's candidature from the election contest, in favour of the Congress candidate.

The poster then goes on to say that now when responsible Ministers of the Punjab Government have accepted the demands of the Harijans and have also submitted their recommendations to the Central Government, it has become incumbent upon Vaid Kartar Singh in conformity with the decision of the Party to withdraw in favour of the Congress candidate Shri Amar Singh, but Vaid Kartar Singh has refused to do so and has on the other hand, entered into an arrangement with Shri Balbir Singh and is handling Harijan voters in the interest of the latter.

The poster then informs the voters that Vaid Kartar Singh is no longer a candidate of the Pasmanda Janta Party and that they should cast their votes in favour of the Congress candidate and should not allow themselves to be misled by Vaid Kartar Singh. The poster also gives a summary of the demands of Harijans about which it says the Development Minister had given an assurance in writing to the effect that the same would be conceded soon and that the Punjab Government would be sending their recommendations to the Central Government at an early date.

The poster ends by saying that the response of the Ministers of the Punjab Government to the demands of the Harijans was very satisfactory and yet Vaid Kartar Singh being in league with Ch. Balbir Singh was practising deception on the Harijans and alienating them from the Congress Party which had given them so many concessions.

Finally the poster exhorts the Harijans to cast their votes for the Congress candidate Shri Amar Singh in order to make him successful.

The poster purports to have been issued by Shri Hari Dass and Shri Charan Dass, President and Secretary respectively of the Pasmanda Janta Party, Shergarh, Shri Charan Singh and Shri Charanjit Singh, Secretaries of the Party at Adarawal and Mauza Rahimpur respectively and Shri Gurmit Singh, Joint Secretary of the party at Hoshiarpur.

43. The poster (Ex. P.5) was alleged to have been printed on 5th May, 1955 at the Mehrish Press, Hoshiarpur and was alleged to have been freely distributed throughout the length and breadth of the constituency on the following two days.

It is further alleged by the petitioner that on the appearance of this poster Vaid Kartar Singh issued and distributed a counter poster on 6th May 1955 saying that he had not accepted any bribe from the Congress and had not withdrawn his candidature.

44. Shri Amar Singh's defence as regards the charge in Para 7(iii) List "C" was one of complete denial. He denied that any approach had been made by him or by any of his agents or supporters or by Sardar Partap Singh Kairon with or without his consent or connivance, to Ram Chand with the gratification, consideration and promises as alleged by the petitioner for the purpose of inducing the scheduled caste voters, to vote for him and to refrain from voting for Vaid Kartar Singh etc. He also stated that as far as he could say, Shri Partap Singh Kairon did not address any communication to Ram Chand and that the one alleged by the petitioner appeared to be a concoction.

As regards the charge in Para 7(iv) List "D", he asserted that the allegations were false and baseless and no such offers or promises were made by anyone to Vaid Kartar Singh, Respondent No. 2.

This line of defence was relentlessly pursued in the cross-examination of the petitioner's witnesses and an application was also made on 20th March, 1957 for permission to allow photographs of the letter Ex. P.X to be taken. This was presumably done with the object of examining a Handwriting Expert to establish that the letter was a forgery. In fact, the learned counsel for Shri Amar Singh did not repudiate this suggestion when it was made by the learned counsel for the petitioner. On 13th June, 1957, however, when Shri Partap Singh Kairon was examined as a court witness he admitted that the letter Ex. P.X was genuine and had been written by him to one Ram Chand of village Shergarh. This put an end to the wild goose chase on which Shri Amar Singh had embarked till then and is indeed a sad commentary on the way defences are sometime fashioned in courts, for if this letter was a genuine piece of writing as indeed it was, then it is difficult to believe that Shri Amar Singh who at the time the letter was produced before us was a Deputy Minister in the Punjab Government and had frequent opportunities of meeting Shri Partap Singh Kairon, did not come to know about the letter. Even if it is assumed that he was initially ignorant about the circumstances under which the letter came to be written it is rather hard to believe that he continued to be so till Shri Partap Singh Kairon owned it up. Such an attitude on the part of Shri Amar Singh lends a sense of utter un-reality to a great deal of cross-examination of witnesses conducted on his behalf and is indeed a characteristic feature of his defence throughout.

45. Although Shri Partap Singh Kairon is concerned with the allegations forming the subject matter of both these charges, yet by the majority order dated the 26th October, 1957, notice was issued to him only to the effect that on 4th May, 1955, he had made certain offers to Shri Ram Chand as contained in his letter Ex. P.X, and that on 11th April, 1955 at village Manjhi he had made certain offers to one Labhu Ram Lambardar of Dada village and had ordered the release of certain restrictions under the Indian Forest Act and the Punjab Chos Act if the voters of that area cast their votes in favour of Shri Amar Singh. Learned counsel for Shri Partap Singh Kairon therefore argued that the charge against his client (leaving aside the charge relating to Labhu Ram for the present) was confined to Para 7(iii) List "C" only and that the petitioner should not be permitted to refer to the allegations in Para 7(iv)—List "D" as his client was never charged with them.

Learned counsel for the petitioner on the other hand argued that it was perhaps through an over-sight that the notice was restricted to only one set of allegations. We regret we cannot take that view of our order and must, therefore, agree with the learned counsel for Shri Partap Singh Kairon that his client is not concerned with the charge contained in Para 7(iv)—List "D".

46. Shri Partap Singh Kairon did not file any regular written statement in response to the notice issued to him. His counsel however filed on his behalf on 11th July, 1959, a reply to the notice issued against his client wherein he denied in toto the allegations made against his client in the petition. He also stated that his client would cross-examine all the petitioner's witnesses who had deposed against him and would also produce defence.

47. We shall first take up the charge relating to the letter Ex. P.X. which as stated above, is elaborated in List "C". The only witnesses examined by the petitioner in respect of this charge are Ram Chand (P.W. 28) and Vaid Kartar Singh (P.W. 34). The petitioner's case as unfolded through the testimony of these witnesses is as follows:—Ram Chand (P.W. 28) is a Harijan belonging to

village Shergarh. He is a Chamar by caste who when he came up to give evidence on 4th October, 1953, gave his occupation as tailoring. At later stages of the trial he stated that he had joined Vaid Kartar Singh as a partner in running a Vaid's shop. His evidence is that he was President of a party known as Pasmanda Janta Party in Hoshiarpur District. The party according to him had no branches anywhere except the main office in Hoshiarpur town. It had put up Vaid Kartar Singh as its candidate at the bye-election in dispute. Shri Amar Singh, Respondent No. 1, met him on several occasions and asked him to persuade Vaid Kartar Singh Respondent No. 2 to withdraw from the contest but he declined to accede to his request. On 4th May 1955, Shri Amar Singh had another talk with him and it was decided that they should meet at 9 P.M. that day at the house of Vaid Kartar Singh in Kashmiri Bazar, Hoshiarpur which was the usual meeting place for the members of the Party. Consequently at 9 P.M., Ram Chand arrived at the rendezvous where he was joined later by Shri Amar Singh and Vaid Kartar Singh. Shri Amar Singh informed Ram Chand that in response to his request to withdraw from the contest, Vaid Kartar Singh had told him that the President and workers of the Party should be consulted in that connection and that if their demands are acceptable he might accede to his request. Shri Amar Singh also told Ram Chand that Shri Partap Singh Kairon was already in town and that they should have a talk with him. All the three of them then went in a jeep to the P.W.D. Rest House where they found Shri Partap Singh Kairon and Shri Hari Singh M.L.A. together. Meanwhile, one Lachhman Singh of Bhagowal also came there and then in the presence of all these persons Shri Amar Singh asked Ram Chand to state his difficulties before Shri Partap Singh Kairon.

Ram Chand thereupon placed his demands (which he described in his evidence as conditions) before Shri Partap Singh Kairon who expressed his inability to meet all of them. Shri Amar Singh and Shri Hari Singh however prevailed upon him to accede to the demands as they told him that unless Harijan votes were secured as a result of the withdrawal of Vaid Kartar Singh from the field, they could not win the election.

Ramchand then told Shri Partap Singh Kairon that as the Government often made promises which it did not actually keep, he should give his acceptance of their demands in writing. On Shri Partap Singh Kairon agreeing to this, the witness left the place leaving Vaid Kartar Singh behind to collect the writing. Before he actually left, Shri Partap Singh Kairon asked him to issue a poster to the effect that the demand of Harijans having been met Vaid Kartar Singh had withdrawn from the contest and that Harijan voters should therefore cast their votes in favour of Shri Amar Singh. To this the witness replied that he would place the writing before the Harijan public and if they agreed, the poster would be issued. He then went back to Vaid Kartar Singh's house where he kept sitting till Vaid Kartar Singh returned with Shri Partap Singh Kairon's letter Ex. P.X.

Next day they called a meeting of their workers where the Minister's letter was read over before those present. There was however a sharp conflict of opinion among the workers and it was declared that Vaid Kartar Singh would not withdraw from the contest. Some Harijans thereafter issued the poster Ex. P.5 wrongly styling themselves as office-bearers of the party. These posters were widely distributed by Shri Amar Singh and his supporters to influence Harijan voters.

48. In the cross-examination of this witness as well as in the counsel's arguments, an attempt was made on behalf of the respondents to show that there was no such body as Pasmanda Janta Party and that in any case it was not a party of which the respondents could or should have taken any notice. From the evidence on the record, however, we feel satisfied that what ver be its strength, constitution and importance and whatever be its life-span, a party known by the name of Pasmanda Janta Party did actually exist and it was a party of Harijans of which Ram Chand and Vaid Kartar Singh were the leading lights. There can also be no doubt that it was a mushroom growth which came into existence with the bye-election in dispute and died with it. But so long as it lived, its activities did cause a certain amount of anxiety to Shri Amar Singh and his workers and supporters. The other points that came out in the cross-examination of this witness were that from 1950 to 1953, he and Vaid Kartar Singh were both connected with the Socialist Party and were supporting the petitioner, Shri Balbir Singh. The witness also admitted that before laying his demands before Shri Partap Singh Kairon they had been making representations to the Punjab Government. He also stated that he had given his demands to Shri Partap Singh on 4th May, 1955 in writing and that the meeting of the workers held on the following day was attended by about 100 or 150 workers. He could not however give the names of any one of those who were in favour of withdrawal of Vaid Kartar Singh nor of those who were opposed to it. He further stated that

immediately after the result of the bye-election was announced, he gave the letter Ex. P.X to the petitioner who later on returned the same to him.

49. The next witness Vaid Kartar Singh (P.W. 34) generally supported the story of Shri Ram Chand and stated that on 4th May, 1955 at about 7-30 P.M. he was met by one Ram Parkash Manchanda who took him to the house of Shri Amar Singh. Shri Partap Singh Kairon, Shri Hari Singh M.L.A. and Shri Amar Singh were already in the house. There Shri Hari Singh and Shri Amar Singh offered him Rs. 2,000 and also promised to get him a Congress Ticket at the next general elections if he agreed to withdraw from the contest. He however told them that personal considerations would not weigh with him at all but if something was done to ameliorate the lot of the Harijans, he might agree. He was then asked to state what he wanted, to be done for the Harijans to which he replied that Ram Chand, President of his Party would be able to say about that. After some time, Shri Partap Singh Kairon and Shri Hari Singh went away while he himself went along with Shri Amar Singh to his own house in Kashmiri Bazar. From there they picked up Ram Chand (P.W. 28) and then the three of them drove together to the P.W.D. Rest House.

In regard to the events at the P.W.D. Rest House, with minor variations, his evidence is on the same lines as that of Ram Chand. After receiving the letter Ex. P.X. which was put inside the cover Ex. P.Y, he returned to his house where he read out and delivered the letter to Ram Chand. Next day at the meeting of the workers he read out the letter again. There was however a division among the persons present at the meeting. Some of the workers favoured acceptance of the assurances contained in the letter and consequently his withdrawal from the contest but others were against it.

50. It is now to be seen how far this evidence can be relied upon in support of the petitioner's case. Both these witnesses are close friends and associates not only in politics but also in business. They have been joining and leaving political parties together and their inconsistency in politics is only matched by their loyalty and friendship for each other. They are also close associates and friends of the petitioner whom they have been supporting in elections. From 1950 to 1953, according to their own admissions, they were both members of the Socialist Party of which the petitioner was a prominent member. A number of respondents' witnesses and petitioner's own witnesses whose testimony we see no particular reason to disbelieve on this point, have deposed to both of them being keenly interested in the petitioner and his election campaign. The fact that Ram Chand, according to his own statement readily parted with the letter Ex. P.X. in favour of the petitioner and allowed it to remain with him for some time, is itself a strong proof of their faith and interest in each other.

Neither of these witnesses states that before the 4th May 1955 they had given any encouragement to Shri Amar Singh in the overtures which he had been making. The evidence of Ram Chand, on the other hand, is that he had all along repulsed his advances. Neither of them talks of any previous engagement between them and Shri Amar Singh for a meeting on 4th May, 1955. As a matter of fact Vaid Kartar Singh does not mention any previous encounter between himself and Shri Amar Singh when the subject of his withdrawal from the contest was mooted. On 4th May, 1955, too, he only casually met one Ram Parkash Manchanda, who asked him to accompany him to the house of Shri Amar Singh which he did. At the house, he found Shri Partap Singh Kairon, Shri Hari Singh M.L.A. and Shri Amar Singh.

Curiously enough, even at Amar Singh's house he had no talk with Shri Partap Singh Kairon although according to his evidence he had been specially asked to go there for that purpose. The only talk mentioned by him in his statement is with Shri Hari Singh M.L.A. and Shri Amar Singh. It is also strange that although Shri Amar Singh had already had several meetings with Shri Ram Chand before, according to this witness, Shri Amar Singh asked him on that day, i.e. 4th May, 1955 to create an occasion for their talks with Ram Chand.

It is also strange that although according to these witnesses the most vital part of the parleys which they had to carry on with Shri Partap Singh Kairon lay in the acceptance of their demands by the Government, yet these two alleged leaders of the Harijan community did not hold any consultations between themselves before the demands were actually put before the Minister. It is again highly improbable that Shri Ram Chand who was so vitally interested in the fulfilment of those demands should not have had the patience to wait at the P.W.D. Rest House to ensure that the Minister's acceptance of those demands was in terms which did not admit of any doubt. He does not say that he was not serious about those demands or that he had found himself in an embarrassed position from which he was anxious to extricate himself by getting away from there as fast as

he could. His evidence on the other hand is, that he was very keen on those demands and had even the temerity to tell the Minister in his face that the Government often made promises which it did not actually redeem and that he must therefore have a written acceptance of his demands by the Minister and yet he would not wait to see how the acceptance was phrased. The strangeness of his behaviour reaches its climax indeed when we are told by Vaid Kartar Singh that although both of them were fully satisfied with the assurance given by the Minister in his letter Ex. P.X. yet at the meeting next day both were on the side of those who were opposed to Vaid Kartar Singh's withdrawal from the contest. After all, both of them could not have been blind to the realities of the situation. It is sheer A.B.C. of election calculus that with the resources and votes at their demand, they could not have even dreamt that Vaid Kartar Singh would win the election. It is admitted by Vaid Kartar Singh that he did not have even a polling agent at any of the polling booths and his total expenditure including the amount spent by his Party was below Rupees Eight Hundred. Then what gains and prospects, if one were to believe their evidence, prompted these seemingly intelligent persons to embark upon a career of treachery and perfidy. Why should they have chosen to court the annoyance of the Development Minister of the State who had shown such great sympathy and interest in the cause of their community and the almost sure prospect of a defeat in election in preference to the benefits and advantages which their arrangement with him would bring to their community? To these and several other questions which naturally arise in one's mind, there seems but one answer and that is that the story of a bargain and a compact between them and Shri Partap Singh Kairon as put before us, is not true.

51. A close and careful examination of Vaid Kartar Singh's evidence reveals that although he was trying hard to support the version of his friend Ram Chand, the attempt had involved too great a strain on his wits. It was obvious that he was giving evidence to a set pattern; but since the details of the narrative had been left to his own imagination, he did as much damage to it as his naivete would permit. His anxiety to appear as a genuine "Vaid" also enabled the cross-examining counsel to tie him up into knots and his position became more and more difficult with each answer that he gave concerning his professional qualifications. His final discomfiture however came when he was faced with the unexpected ordeal of reading out to us the letter Ex. P.X. regarding which he had deposed earlier that he had read it out to Ram Chand on the night of 4th May 1955 and had read it over again at the meeting of the workers next day. His attempt resulted in his utter collapse till he finally found means of escape in stating that he had only read out the words "Pearey Ram Chand Ji" when the audience insisted upon his telling them orally what the purport of the letter was. The following extract from his deposition on 12th August, 1960 illustrates the general character and quality of his evidence.

"Q. What portion of the letter marked P.X were read by you to the audience in the meeting?

A. I had started reading the letter to the audience and as I had read only the words "Pearey Ram Chand Ji", the audience insisted upon telling them orally the purport of the letter which I did even without reading it.

Q. In your statement dated 11th December, 1956, you had stated "In the meeting the letter of Shri Kairon was read over. On hearing the same there was a division in our party" but now you have stated that you read only the words "Pearey Ram Chand", and not the rest of the letter. Which of these statements is correct?

A. "I was reading the letter in the meeting, when I had gone half through the letter, the persons gathered there, in view of my slow speed in reading asked me to give them the purport of the letter instead of reading the letter. On that I explained to them that we had give in writing 5 or 6 demands to Shri Kairon and that in reply to that, Shri Kairon had assured in the letter that those demands would be fulfilled. There-upon, there was a division as stated by me already."

There is also a great deal of prevarication and confusion in his statement about what happened after Shri Partap Singh Kairon and Shri Harl Singh left the house of Amar Singh on 4th May, 1955. He first stated that he and Shri Amar Singh left the house together but when he appeared again on 12th August, 1960 for further cross-examination, his version was that he left the house first and after he had walked about half a mile on foot he was picked up by Shri Amar Singh in his jeep.

52. The story of Ram Chand and Vaid Kartar Singh is also not supported by Shri Hari Singh M.L.A., and Shri Ram Parhash Manchanda. The third man Lachhman Singh of Bhagowal who according to them was present at the parleys was not examined by the petitioner to corroborate their statements. It is not even alleged that the said Lachhman Singh was in any way interested in any of the respondents or was inimical to the petitioner or these witnesses. Shri Hari Singh M.L.A. (R.W. 5) was examined as a defence witness by Shri Amar Singh. He totally denied the entire incident beginning with the events at the house of Shri Amar Singh and ending with those at the P.W.D. Rest House. He stated that he did not even know if Shri Partap Singh Kairon was at Hoshiarpur on 4th May, 1955. His evidence has been attacked by the learned counsel for the petitioner on the ground that he was a member of the Punjab Vidhan Sabha having been elected on Congress Ticket, and was also an active campaigner on behalf of Shri Amar Singh in the bye-election in dispute. This is quite true. There can be no doubt about his being very keenly interested in Shri Amar Singh and Shri Partap Singh Kairon; he is therefore not likely to give evidence against them. The fact however remains that he has not supported the petitioner's case.

53. Shri Ram Parkash Manchanda (R-1/W-17) was examined as a witness on behalf of Shri Partap Singh Kairon. His evidence is that he was a Congress worker from 1942 to 1953, but was expelled from the Congress and in the Municipal elections of 1953, he was opposed by Shri Amar Singh and others and supported by the petitioner and his group. In the bye-election in dispute he was a supporter of the petitioner along with several others including Vaid Kartar Singh, Shri Ram Chand and Shri Niranjan Singh Singha, Advocate. He stated that he was a member of the Allotment Committee which had been formed to allot evacuee shops and houses in Hoshiarpur to displaced persons in the year 1948-49 and that no house or chaubara in Kashmiri Bazar was allotted to Vaid Kartar Singh. He also denied having taken Vaid Kartar Singh to the house of Shri Amar Singh to meet Shri Partap Singh Kairon. He further stated that 4 or 5 days after the result of the bye-election was declared, the petitioner had called at his house a meeting of his workers which was attended by the witness along with Vaid Kartar Singh, Shri Ram Chand, Niranjan Singh Singha, Advocate, Shri Waryam Singh and a few others. At the meeting the petitioner asked the persons present to supply him with some material for the election petition but all of them replied that they had no such material. At that stage, Shri Ram Chand stated that he had sent an application to Shri Partap Singh Kairon to which the latter had made a reply in the form of a letter. Ram Chand then produced that letter at the meeting and showed it to every one present there. The witness further deposed that Vaid Kartar Singh had been put up as a candidate with the object of depriving the Congress candidate, Shri Amar Singh, of Harijan votes and as a device to help the petitioner. He also claimed to be one of those who in collaboration with Ram Chand and Vaid Kartar Singh had started the Pasmanda Janta Party but the Party was only in name as it had neither any registered office nor a Register of members nor any other tangible sign of its existence.

54. We would not have referred to the statement of this witness at such length, were it not for the fact that his name was mentioned by Vaid Kartar Singh as one who had taken him to the house of Shri Amar Singh to meet Shri Partap Singh Kairon.

He has, however, not impressed us as a wholly truthful witness and we are not inclined to attach much weight to what he says. In his cross-examination by the learned counsel for the petitioner, there is an allegation that he had agreed to give evidence for Shri Partap Singh Kairon because he had only recently been allotted a Coal Depot although he had never done such business before. From 1948 to 1954, he was running a General Merchants shop in Kashmiri Bazar and after that a Ghee store. It is, therefore, rather surprising that he should have been allotted a coal depot in 1959 near about the time when his evidence assumed a certain amount of importance in the estimation of Shri Partap Singh Kairon's advisers. A similar allegation was also made by the learned counsel in the case of another witness, namely, Comrade Jaswant Singh (R-1/W-15) who too was an active worker and supporter of the petitioner but had turned his back on him and had given evidence on lines similar to those given by Shri Ram Parkash Manchanda. There was yet another witness to whom a pistol licence was alleged to have been issued and still another whose troubles in connection with the recovery of Taccavi loan were stated to have been assuaged. The proximity of dates on which fortune smiled on all these witnesses with the period when need arose for Shri Partap Singh Kairon to look about for witnesses from among the erstwhile supporters and workers of the petitioner, may create a certain amount of suspicion



in one's mind about the tainted character of their evidence, but suspicion, however, strong cannot take the place of proof which is certainly wanting in this case. We need not, therefore, say anything more about this allegation and leave it at that. The fact still remains that Ram Parkash Manchanda has also not supported the story of Vaid Kartar Singh.

55. The story of bargaining between Shri Ram Chand and Vaid Kartar Singh on the one side and Shri Amar Singh and Shri Partap Singh Kairon on the other side, gets another jolt from the circumstance furnished by the letter Ex P.X. itself. The envelope, as may be seen, bears the address of Shri Ram Chand in the hand of Shri Partap Singh Kairon which reads as follows:—

"Sh. Ram Chand,  
Village: Shergarh,  
P.O. Khas, District: Hoshiarpur."

If the letter was delivered by Shri Partap Singh Kairon to Vaid Kartar Singh personally as the latter would have us believe, then where was the necessity for writing such an elaborate address on the envelope?

It is no body's case and indeed it is not even suggested that the letter had already been written, addressed and placed in the cover. The evidence on the other hand is that all this was done in the presence of Vaid Kartar Singh. It seems therefore more probable that the letter was written by Shri Partap Singh Kairon in reply to a communication which he had received from Shri Ram Chand earlier and in which the writer had given his full address as stated above. The original intention probably was to send the reply by post and therefore the full postal address of the addressee was written on the envelope. Later on, this intention appears to have undergone a change and the letter was sent by hand. The writing "sent through hand" also indicate the subsequent change of mind.

It is much to be regretted that Shri Partap Singh Kairon when he appeared as a Court witness, did not make any attempt to explain the circumstances under which he happened to write this letter. He stated that he did not know Vaid Kartar Singh or Shri Ram Chand of Shergarh and had never met them. Regarding the letter, he said "it appears to me that when I visited Hoshiarpur some body must have left some application or letter with my Secretary and this letter Ex P.X. was written in reply to that letter or writing, but I do remember that Vaid Kartar Singh or the said Ram Chand did not meet me in the Rest House on that day nor I delivered the letter Ex P.X. in the envelope P.Y. to Vaid Kartar Singh or to Shri Ram Chand."

In reply to a question in cross-examination he stated that he did not remember if during his visits to Hoshiarpur district, Shri Amar Singh ever told him that in the bye-election there was another candidate by name Vaid Kartar Singh. He also stated that it was quite possible that the letter to which Ex. P.X. was a reply might be traceable among his records as Development Minister. No such letter was, however, produced before us at any stage of the proceedings.

This is hardly the kind of evidence one would have expected of him in a case like this. He did not know any person of the name of Ram Chand of village Shergarh and yet he went to the length of writing him in his own hand a long letter answering with catechismal formality every one of the questions raised in the letter. His counsel tells us that he is temperamentally very affectionate and courteous. We do not know; probably he is. But it still involves too great a strain on one's credulity to believe that he would address an utter stranger in this strain:—

"Dear Ram Chand Ji,

The affectionate reply to your letter is as follows:"

Instead of telling us what happened when he wrote the letter Ex P.X. he tells us what appeared to him to have happened or what must have happened. The statement, we are constrained to say, is evasive and lacking in candour. We would even go further and say that it would be quite legitimate in the circumstances to draw all permissible presumptions against its maker. He and Ram Chand were the only persons who could illumine the obscure parts of the story. Unfortunately, however, one of them moulded his version to suit the ends of his friends while the other appears to have kept the secret to himself leaving us to grope in the dark in order to discover the truth for ourselves.

56. Learned counsel for the petitioner summed up his submissions regarding the letter as follows:— The letter Ex P.X., he argued, was evidently written in connection with the election. It was written on 4th May, 1955 while the polling was to be held on 8th May, 1955. The letter did not show where it was being written from. This was extraordinary in the case of communications of that nature. It stated that it was being written in reply to the addressee's letter but it did not mention the date of that letter. It was not written in the form of an official communication and was rather an important personal letter, the kind of letter a politician in office would write to prominent political workers or colleagues. In any case, the cordiality with which the letter began showed familiarity between the writer and the person written to. The manner of delivery indicated secrecy as well as urgency, as if the matter could not brook any delay. The text of the letter which conceded a number of demands beneficial to the Harijan community, showed that the writer had a keen interest in placating and winning over to his side the members of that community. The text also indicated prior meeting or discussion between the writer and the addressee otherwise it was unthinkable that an utter stranger would have the courage to leave such a letter with a Minister or his Secretary and hope to receive a reply. In the end, there was an earnest appeal for cooperation. What cooperation did the writer need from an utter stranger about whose status, importance and representative character he had no knowledge? Since the letter was addressed to one Ram Chand and also address also corresponds with the actual address of P.W. 28 there could be no doubt that the letter was intended for him. This made Ram Chand a natural witness whose evidence, the learned Counsel argued, should be believed. The letter was written in Gurmukhi Script. Even English words had been repeated in the Gurmukhi script. This was evidently done to satisfy Vaid Kartar Singh who knew Gurmukhi script only.

Learned counsel then referred to the varying and wholly untenable stands taken by Shri Amar Singh and Shri Partap Singh Kairon. He contended that Shri Amar Singh first took his stand that the letter Ex P.X. had no existence during the time of election and had been got up for the purpose of petition only. In support of this stand, he examined on 19th and 20th March, 1957 two witnesses namely, Ram Rattan (R.W. 6) and Nidhan Singh (R.W. 14). On 20th March, 1957 he made an application for permission to take a photograph of the letter with the object of examining a Handwriting Expert. He did not include the name of Shri Partap Singh Kairon among his defence witnesses and in his cross-examination on 27th August, 1957 denied having ever inquired from Shri Partap Singh Kairon about that letter. But on 17th March, 1960 he took up an altogether different stand. In cross-examination of P.W. 28 Ram Chand, three different suggestions were put to him. He was first asked if the letter Ex P.X. was not received by him from Chandigarh in reply to a letter which he had written to Shri Partap Singh Kairon there. The second suggestion was that the letter was sent through a driver named Udharn Singh. This was probably because the word "Udharn Singh" appeared on the back of Ex P.Y. The third suggestion was that there was another Ram Chand in village Shergarh and the letter was intended for him. All this, the learned counsel for the petitioner argued, went to show the utter falsity of the defence taken by Shri Amar Singh. Why did he have to do so, if the letter Ex P.X. had no connection with his election and he himself was not concerned with it in any manner? Did it not indicate a guilty conscience? As regards Shri Partap Singh Kairon, the learned counsel argued, the entire evidence relating to the circumstances in which the letter was written had been withheld by him. He had stated during the course of his examination before notice, that the letter to which Ex P.X. was a reply might be among his records but he did not come forward again to say that the letter could be traced nor did he throw any further light on the subject. His counsel made a statement on his behalf that his Private Secretary Shri Asa Singh would appear as a witness in defence; but he too was not examined. The conclusion which the learned counsel for the petitioner wished us to draw was that since the respondents had put up a false defence and had also failed to produce evidence which was in their possession and which could have explained the circumstances under which the letter Ex P.X. was written, an adverse inference should be drawn against them. This would further strengthen the case made out by the petitioner.

57. The last submission made by the counsel for the petitioner was that the contents of the letter Ex P.X. were reproduced in the poster Ex P. 5 which Shri Amar Singh got printed through his supporters in the Harijan community. If Shri Amar Singh did not know about Ex P.X. and if it had nothing to do with the election, then how could he have got its contents reproduced in the poster Ex P. 5? The poster Ex P. 5 is indeed a curious document. Like the proverbial

Curate's egg, it is good only in parts, as neither side is prepared to rely upon it wholly in support of its case.

We have already set out at length the contents of this poster and the persons in whose name it was issued. Shri Amar Singh denied having got it printed. The petitioner, therefore, examined Shri Ram Dass (P.W. 43), Proprietor, Mehrish Press, Hoshiarpur to prove that the poster Ex P.5 was printed in his press. He further stated that the manuscript of the poster was brought to him for printing by the persons whose names are mentioned at its bottom, to one of whom he also showed its proof. He did not produce either the manuscript or the Bill Book to show who placed the order for printing and made payment in respect of the poster Ex P.5 although he stated that it was his practice to obtain manuscripts of posters was undertaken by him. The receipt Ex P-9/B does not throw any light on the point as it does not make any mention of any specific poster. His evidence, therefore, in no way connects Shri Amar Singh with the printing of the poster Ex P.5.

Ram Chad, P.W.28, and some other witnesses, namely, P.W.4 Waryam Singh, P.W. 16 Baij Nath, P.W. 31 Hazura Singh, P.W. 36 Naranjan Singha and P.W. 37 Rakha Ram deposed to the distribution of posters like Ex P.5 by Shri Amar Singh and his supporters. P.W. 48 Piara Lal stated that he had affixed such posters in various villages at the instance of Shri Amar Singh. From the evidence of these witnesses, the learned Counsel for the petitioner argued that there was no escape from the conclusion that Ex P-5 was got printed by Shri Amar Singh. In fact having regard to its contents, it would be futile, according to the learned counsel for the petitioner, to contend that it was the work of Vaid Kartar Singh, Shri Ram Chand or the petitioner, for it is wholly impossible that these persons would publish the poster which was admittedly against their own interests.

What is possible during the elections and what is not is a subject on which no definite opinion can be given by anyone. Things are known to have happened during the elections which would baffle and confound the sharpest intelligence. We have already stated earlier in another connection that no weight can be attached to the oral evidence of such witnesses in regard to the publication and distribution of posters. The evidence in regard to the publication and distribution of the poster Ex P.5 is no better. All these witnesses are evidently interested in the petitioner. We conclude, therefore, that the poster Ex P.5 was not printed or published by Shri Amar Singh, Respondent, but was printed and published by some members of the Harijan community whose names are mentioned at the bottom of the poster who were not satisfied with the conduct of Vaid Kartar Singh. Shri Amar Singh cannot, in the circumstances, be fixed with the knowledge of the contents of the poster Ex P.5 nor can we, for the same reason accept the contention of the learned counsel for the petitioner that as some of the demands alleged to have been conceded by the Development Minister in Ex P.X., as mentioned in the poster Ex. P.5, it would follow that the letter Ex P.X. was written by the Development Minister in the circumstances as stated by P.Ws. Ram Chand and Vaid Kartar Singh. It is significant that the letter Ex P.X. does not find any mention in the poster Ex P.5. It is, however, mentioned therein that a meeting of the Harijans was held on the 5th May, 1955 at which certain demands of Harijan community were formulated. It is also recited therein that some of those demands were conceded by the then Development Minister, Punjab in a written assurance given by him. Now this assurance about the demands that were formulated on 5th May, 1955 could have no reference to the demands mentioned in letter Ex P.X. which was admittedly written on 4th May, 1955.

The circumstances that the visit of the Development Minister to Hoshiarpur on 4th May, 1955 was of a private nature or that the letter Ex P.X. did not appear to have been written to an utter stranger would also not lead to the irresistible conclusion that the letter Ex P.X. was in fact written in connection with the bye-election. But granting all this and even a little more of what the learned counsel for the petitioner has to say about the letter, can it still be said that the only conclusion which one must draw from these circumstances is that the letter was written as a result of bargaining and agreement between Shri Partap Singh Kalron on the one side and P.Ws. 28 and 34 on the other? Is the possibility of the letter having been written by the Minister in the ordinary course of his dealings with the representatives of important sections of the public and of his replying to the representations received from them, entirely ruled out? It is quite conceivable that elections may have lent a point and an urgency to the demands which would have otherwise had to pass through bureaucratic red tape and routine, but merely because a Minister has shown promptness in replying to a representation or has promised and assured quick action will not necessarily lead to the

conclusion that it was a gratification, promise or consideration in return for the votes of the individual or the community.

58. The poster Ex P.5 instead of supporting the petitioner's case strikes at the very root of it. Although the poster does not bear any date, it is in evidence that it must have been issued sometime after the 5th May, 1955 as otherwise it could not have referred to a meeting of the Pasmanda Janta Party which it says was held on that date. Now according to the poster, it was at that meeting only that certain demands were formulated and addressed to the Ministers of the Punjab Government. It was also at that meeting that a decision was taken that if the Punjab Government agreed to and gave assurance to those demands the party would withdraw Vald Kartar Singh's candidature, in favour of Shri Amar Singh. All this is in direct conflict with the petitioner's case, as propounded through his witnesses Ram Chand and Vald Kartar Singh. The poster refers in terms to the written assurance given by Shri Partap Singh Kairon and attempts to give even a summary of the demands and yet it says nothing about that written assurance having been placed before the meeting held on 5th May, 1955. Learned counsel for the petitioner realizing the conflict inherent in his position, turned round and argued that the poster was deliberately phrased in that manner so as to spread a false version of the events and therefore he did not reply upon it in proof of what was stated in it. He relied upon it only to this extent that Shri Partap Singh Kairon had given an assurance in writing and he had done so with the object of securing Harijan votes for the Congress candidate Shri Amar Singh. Now we do not think it is permissible to make such use of a document i.e. to accept out of it what suits one and to reject the rest. We also not think that a party can be allowed to approbate and reprobate in this manner, but even if we were to allow such use of the document we cannot read into it what is plainly not there. We cannot even by attempting to read into the lines as the learned counsel for the petitioner wishes us to do, deduce from this document that the written assurances given by Shri Partap Singh Kairon were the result of any agreement between him and the so-called representatives of the Harijans that the Harijans would cast their votes in favour of Shri Amar Singh and Vald Kartar Singh would also withdraw in his favour as consideration for the assurance given by him nor can we infer from it that the object of Shri Partap Singh Kairon in writing the letter Ex P.X. was not to redress the grievances of the people but to induce the Harijan voters to vote for the Congress candidate.

59. Learned counsel for the petitioner referred us to a decision of the Supreme Court and three decisions of High Courts in support of his case. The Supreme Court judgment in the case of *Khaddar Sharif Versus Mannuswami Gounder and others*<sup>13</sup> cited by the learned counsel has no bearing on this case at all. The question in that case was whether a sum of Rs. 500/- paid by the appellant to the North Arcot District Congress Committee was a donation made to the Committee out of philanthropic motives or was an expense incurred for election purposes which should have been shown in the Return of Election Expenses and all that their Lordships say in that case which can even remotely be some use to the petitioner is that while it is meritorious to make a donation for charitable purposes, if such a donation is made at the time, or on the eve of an election, it is open to the charge that its real object was to induce the electors to vote in favour of the particular candidate.

60. The next case—*Magan Lal Bagdi Versus Hari Vishnu Kamath*<sup>14</sup> is a judgment of the Madhya Pradesh High Court. The finding of the Tribunal in that case was that the appellant and one Shrimati Sarla Devi Pathak who was also a Congress candidate went to a village where they asked the villagers to vote for the Congress candidates. The Harijans told them that they would vote for the Congress candidates but their difficulty of water should first be removed, to which the appellant and Shrimati Sarla Devi replied that a well would be constructed and that they should vote for Congress candidates. There was a second visit to the village and a repetition of the condition laid down by the Harijans for casting their votes in favour of the Congress candidates. The Appellant and Sarla Devi were then shown a site where a priest was called to consecrate the site and perform the ceremony of digging the well. The appellant and Shrimati Sarla Devi then told the Harijans that they had already deposited Rs. 500/- with Sirpanch Chhablal. It was further found that a well

<sup>13</sup> XI E.L.R. 208.

<sup>14</sup> XV E.L.R. 205.

was actually dug on the site although its expenses were shown to have been incurred by an Organisation called the Janapada Sabha. On these findings it was held that it was a case of bribery under Section 123(1) of the Act.

The decision is clearly distinguishable on its own peculiar facts which have no resemblance with the facts in the present case.

61. The Bombay High Court's judgment in the case of *Ahmadmiya Sherumiya Sheikh Versus Chhippa Ibrahim Nuraji and others*<sup>15</sup> has also no bearing on the facts of this case as that was a case of cash payment of Rs. 3500/- as a condition for the withdrawal of one of the opposing candidates. The case of *Soowalal Versus P. K. Chaudhry and others*<sup>16</sup> which is a judgment of the Rajasthan High Court is however more directly in point. It was held in that case that the act of Government in giving relief or special benefits to the voters of a particular locality or section of the public may amount to corrupt practice within section 123(1) of the Representation of the People Act, 1951, if that act is done with the motive of inducing them to vote for the candidate set up by the ruling party, or in pursuance of a bargain that they should vote for that candidate in consideration of the relief OR benefit given by the Government. The mere fact, however, that the relief or benefit was given on the eve of, or during, elections does not raise any presumption that the relief or benefit was given for the purpose of inducing the voters to vote for the candidate set up by the ruling party.

62. Learned counsel for the petitioner referred to the following passage in Halsbury's Laws of England (Third Edition) Volume 14, Paragraph 184 at page 220:—

"Bribery, however, may be implied from the circumstances of the case and the court is not bound by the strict practice applicable to criminal cases, but may act on the uncorroborated testimony of an accomplice. The court strips the proceeding in each case of every colour, every dress, and every shape to discover its real and true nature".

We are in respectful agreement with the above statement of law which is based on the decisions of English and Irish courts but we fail to see what colour, what dress and what shape the present case must be stripped of in order to find that the corrupt practice of bribery had been committed. We would, rather, derive support for our findings from what appears a few lines above in the same paragraph viz. that "clear and un-equivocal proof is required before a case of bribery will be held to have been established. Suspicion is not sufficient and even the confession of the person alleged to have been bribed is not conclusive".

63. Learned counsel for Shri Partap Singh Kairon while replying to the arguments of the learned counsel for the petitioner submitted that the petitioner's case as disclosed in Para 7(III) of the petition and also as detailed in List "G" was that Shri Amar Singh and Shri Partap Singh had approached Shri Ram Chand and had offered gratification etc. to him as well as to other Harijan voters; but the case as made out in evidence was that it was Ram Chand who went to see Shri Partap Singh Kairon at the P.W.D. Rest House and not that Shri Partap Singh Kairon called on him. This according to the learned counsel was not the meaning of the term "approached" and in as much as the law required that precise allegations should be kept in mind while deciding a charge of corrupt practice, we should reject the petitioner's case out of hand on this short ground alone. We regret we cannot accede to this argument of the learned counsel as we do not give the same meaning to the word "approached" nor do we take such a narrow view of the requirements of law as to precision in such matters.

He next contended that while the allegations in the pleadings were that the offer of gratifications etc. was made individually to Ram Chand and other Harijan voters, the evidence led was to the effect that the offer was contained in the letter Ex. P. X. which was addressed to Ram Chand alone. This again is taking too strict and narrow a view of the pleadings which is not warranted by law.

His third contention was that Ram Chand and Vaid Kartar Singh were not only partisan witnesses but they were also accomplices and therefore their evidence should not be accepted unless it was corroborated in material particulars which he submitted, was completely wanting in this case. His argument was that since both of them were prepared to accept certain benefits and concessions in

<sup>15</sup> XVII E.L.R. 218

<sup>16</sup> XXI E.L.R. 137

return for their votes and support in favour of Shri Amar Singh they were willing and active participants in crime of giving and taking bride. We are not quite sure if the rule regarding accomplice's testimony can apply in all its rigour to inquiries under the Election Law. At least the passage in Halsbury's Laws of England to which we have just referred, does not say so. Secondly, apart from the fact whether they are accomplices or not we have already indicated that we do not accept their evidence.

The fourth contention of the learned counsel is that Para 7(III) and List "C" do not correctly reproduce the contents of the letter Ex. P.X. Learned counsel for the petitioner conceded this; but submitted that the letter Ex. P. X. did not contain all the gratifications, considerations and promises that were offered to the voters. While the allegations in Para 7(III) and List "C" refer to several other promises and gratifications set out therein, some are clearly stated to be those contained in the letter Ex. P. X.

64. Turning now to the letter Ex. P. X., it is clear that para 1 merely expresses the opinion of the writer and is neither a promise nor an offer but the same when reproduced as (a) in Para 7(III) and List "C", purports to be a definite promise made by Shri Partap Singh Kairon. Para 2 of the letter, to start with, is a mere re-statement of the declared policy of the Government. After doing so the writer sets out what he has learnt about the decision of the Rehabilitation Department in the matter of leasing out of certain categories of evacuee lands and then goes on to say that he has already invited the attention of the Rehabilitation Minister to the hardship involved in the terms on which leases are proposed to be granted but the matter has still to be decided finally in accordance with his own views.

The re-production of the above mentioned Para 2 of the letter as at (b) and (c) in Para 7(III) and List "C" of the petition, however, gives an entirely different view of the matter. Therein it is made to appear as if the writer had made a promise to the voters that certain concessions would definitely be granted to them. Reproduction at "d" of what is contained in Para 3 of the letter is also a positive mis-statement of the contents of the letter. Para 4 of the letter does not find place in the allegations contained in the relevant portion of the petition. It is apparent that the benefit of relaxation of restrictions under the Forest Act and the Punjab Chos Act in the letter is not confined to Harijans only but is rather in favour of poor people belonging to all communities whether proprietors or non-proprietors. Even so it is merely a declaration and announcement of the action which the writer has already taken and enunciates the extent to which the concession can legitimately be made. But the same when reproduced as (e) in the petition, amounts to a positive mis-statement of the whole position which we think is highly improper. The reproduction of the promise relating to exemption of Harijan students from payment of school fee as in (f) of List "C" is also a travesty of what is actually contained in the letter.

65. We are, therefore, in agreement with the learned counsel for Shri Partap Singh Kairon and are of the opinion that the case of the petitioner in so far as it relates to the allegations in Para 7(III) and List "C" would merit rejection on this ground alone. The petitioner has led no evidence of any oral promises or offers. His case is confined to what is contained in the letter Ex. P.X. only. But Ex. P. X. does not at all say what the petitioner has alleged in his petition, at any rate, there are neither any promises nor offers of any concessions or benefits.

Ram Chand's version in court about the demands made by him and accepted by Shri Partap Singh Kairon is on still different lines. This is what he says:—

- “(i) That Banjar and waste land be given to Harijans;
- (ii) That the Harijan students who had previously failed in the examination should not be required to pay tuition fee for the next year after re-joining the school;
- (iii) That the Kandi area people should be allowed to cut grass and wood from the jungle area. The relevant restrictions imposed under the law should be relaxed.
- (iv) That the Government should implement its promises made to Harijans regarding concessions given during consolidation proceedings.

There were some others which I do not remember now. Concessions promised to Harijans by the Government during the consolidation proceedings were 10 in number detailed as follows:

- (a) Some places should be reserved for them for storing manure;
- (b) Some places should be reserved for extension of their Abadi;

- (c) Some place be allotted to them for constructing *Janj Ghar*;
- (d) Another space be reserved for them for their cremation ground. They should be provided with play grounds for children.

Others I do not remember".

It is obvious that the demand for grant of Banjar and waste land is not the same thing as leasing out of evacuee cultivated lands which had already been allotted but had not been taken possession of by the allottees. Similarly, the demand regarding implementation of the concessions promised to the Harijans by the Government during consolidation proceedings does not figure anywhere. It is neither in the letter Ex. P. X. nor in the petitioner's allegations in the petition. The only two demands which come anywhere near those mentioned in the letter Ex. P. X. relate to the relaxation of restrictions under the Forest Act and the Punjab Chos Act and the concessions regarding school fees. Regarding both these matters, the statements made in the letter Ex. P. X. are not of such a nature as to amount to a promise or offer of any kind.

66. The last submission of the learned counsel that the statements in the letter Ex. P. X. do not come within the ambit of Section 123(I) of the Act, appears to us to be as substantial as the previous one;

Sub-section (1) of Section 123 of the Act defines the corrupt practice of bribery as follows:—

"(1) Bribery, that is to say, any gift, offer or promise by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, of any gratification to any person whomsoever, with the object, directly or indirectly, of including—

- (a) a person to stand or not to stand as, or to withdraw from being, a candidates at an election, or
- (b) an elector to vote or refrain from voting at an election, or as a reward to—
  - (i) a person for having so stood, or for having withdrawn his candidature; or
  - (ii) an elector for having voted or refrained from voting.

*Explanation.*—For the purpose of this Clause the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money, and it includes all forms of entertainment and all forms of employment for reward; but it does not include the payment of any expenses bona fide incurred at, or for the purpose, of any election and duly entered in the return of election expenses referred to in Section 76".

It is clear that the essence of the corrupt practice of bribery lies in the making of a gift, offer or promise with the object of inducing the electorate etc. to act or to omit to act in a particular manner or as a reward for acting or not acting in a particular manner. A mere declaration of Government's policy or recital of its achievements or promise of public action to redress certain grievances, made by a Minister of the Government even if they tend to influence the mind of the electorate in favour of the ruling party and the candidates set up by it, cannot constitute gratification as defined in the Section. The party forming the Government and its Ministers have as much right to boost and publicise their achievements and tell the electorate what their future policies and programmes of social welfare are going to be as any other political party and its candidates who may be aspiring to supplant them in the governance of the country. Such declarations and assurances can in no case be held to constitute bribery. We are fully supported in this view by a decision of the Election Tribunal, Nagpur in the case of *'Amir Chand Versus Sunder Lal Jha and others'*<sup>17</sup> with which we respectfully agree. Learned members of the Tribunal in that case in repelling the charge of corrupt practice of undue influence observed as follows:—

"Though according to the law in England, no Minister of the Crown or Crown servant and no member of the police force, should engage in canvassing, or be appointed or accepted as a canvasser, there is no law in India prohibiting the State Ministers from taking part in canvassing votes for others. Though they wield considerable influence, and when they canvass, they use that influence, the influence cannot be called undue influence as the law does not prohibit canvassing by Ministers and it is not illegal for them to use that influence.

If a Minister redressed the grievances of a class of the public or people of a locality or renders them any help, on the eve of an election he would not be guilty of a corrupt practice unless he obtains a promise from such people or imposes a condition on them that they should vote for him or any other candidate at the election."

67. In our opinion there is nothing in the letter Ex. P. X. which can be characterised as gratification. Learned counsel for the respondents invited our attention in this connection to a recent judgment of the Punjab High Court in the case of *Balwant Rai Tayal Versus Bishan Sarup and another*<sup>18</sup> where the allegations against the Appellant were that he in the company of leading Congress-men went to a temple which was formerly a mosque and appealed to the Harijans to vote for him. The Harijans then put forward their grievances before him and said that they wanted to continue using the mosque as a temple and also that they wanted a place to build their houses, on which the appellant assured them that he would help them in the matter and get them land as he had been doing in the past. He also assured them that he would see that the mosque remained with them for use as a temple. The appellant also accompanied deputations of Harijans to the Rehabilitation Minister and recommended their case there and the Minister in turn assured them that the Harijans could build their houses on the old grave yard and would not be ejected.

Falshaw J. delivering the judgment of the Court observed as follows:—

"Even if the whole of the statement of this witness is true, the conduct of the appellant hardly seems to me to constitute impropriety in any way, and I cannot see how it could be held to amount to bribery. All that it amounts to, appears to me to be, that the appellant undertook to help the Harijans in certain matters and do his best for them and this is a sort of promise which in my opinion any candidate is entitled to give to any section of his electors".

68. The question as to what meaning should be given to the phrase "offer of gratification to any person whomsoever" came up for consideration before the Election Tribunal, Tiruchirapalli in the case of *Swaminatha Merikendar Versus Ramalingam and other* (No. 2)<sup>19</sup>. The respondent in that case offered, in a speech which he made at a meeting, to secure land and cattle for poor and landless people. This gave rise to a charge of bribery against him. The learned members of the Tribunal while dismissing the charge observed as follows:—

"The only question is whether this amounted to "Offer of gratification to any person whomsoever". In Webster's English Dictionary, the meaning of the word 'gratification' is given as "Something that pleases". Of-course, the people whom he mentioned as his intended beneficiaries (i.e. poor and landless people) were made up of persons. If the term (gratification to any person whomsoever) is mechanically and narrowly interpreted, it can cover the poor people and landless. But, with such a narrow and mechanical interpretation, it can be made to cover even an offer or promise, by proper, noble and harmless measures, of prosperity and happiness to the entire nation (not merely the constituency) or humanity in general. For, the nation (and humanity) is constituted only by persons. We feel that the legislature could not have intended that such a narrow interpretation should be put on the above phrase. We feel that a liberal and reasonable interpretation should be made. We are inclined to hold that offer of land and cattle to the landless and the poor, irrespective of caste, creed, community and religion, does not constitute an offer of such a nature as to constitute an offence. For, giving of land to the landless and improving the position of the poor in general is in line with the lessening of inequality of wealth and income which is a commonly accepted aim and object of statesmen and Governments in most modern democratic countries. We feel that the offer (or promise) made by the 1st respondent in his speech lacks that element of corrupt motive and improper and unfair intention which is contemplated by the legislature (by a reasonable and proper interpretation of the section) as necessary to make out the corrupt practice of bribery under Section 123(1)".

(18) 17 E. L. R. 101.

(19) II E. L. R. 390.



69. There is yet another case of the Punjab High Court which is more recent than the one cited above. The full report of the case: *Ramphal Versus Ch. Brahm Parkash and others* is to be found at page 3661 of the Government of India Gazette dated the 31st December, 1960—Part II Section 3. Their Lordships (Bishan Narain and Dua JJ) while dealing with the allegations arising out of a speech delivered by the then Home Minister Hon'ble Shri Govind Ballabh Pant in connection with certain concessions in the matter of imposition of Sales Tax observed as follows:—

"In a welfare state like ours, where the popularly elected representatives of the people hold reins of the Government and run the State administration solely for the general benefit of the people, it is only fit and proper that those in power actually and promptly re-act to the needs and demands of the people whose chosen representatives they profess to be. This basic and fundamental principle appears to me to underlie proviso (b) to Section 123(2). If the Home Minister in 1957 felt that a provision of law imposing tax on certain commodities was in fact too harsh and called for relaxation in pursuance of the legitimate demands of the tax payers concerned, then I fail to see how the fact that the Minister concerned favourably reacted to the just needs and demands of the people can possibly be construed to amount to a corrupt practice of undue influence. This public action may have influenced some voters in their decision as to for whom they should vote but it can hardly be described to be undue influence. The appellant, however, contends that if such a conduct is likely to influence the voters, then it is most unjust and unfair on the part of the party in power to give relief at a psychological moment which is calculated to put the other candidates at a disadvantage. I may state here that the Election Tribunal and this court are not concerned with the policy of the law. We have to see what the statute says and if the facts on the present record do not fall within the four corners of the statutory definition of undue influence, the charge of corrupt practice of undue influence must fail."

It is significant that although the concession was for the special benefit of a well defined class of persons, namely, traders of Delhi, the case was argued on the basis of "Undue influence" within the meaning of Section 123(2) and not of "bribery" under Section 123(1) of the Act. In fact the petitioner in that case who was himself an Advocate, had alleged in the petition and also argued before the Tribunal that the above allegations amounted to the corrupt practice of bribery as well as undue influence as defined in Sub-Sections (1) and (2) of Section 123 of the Act. But while arguing the case in appeal before their Lordships, he abandoned the plea that the allegations amounted to the corrupt practice of bribery and confined his case to the plea of undue influence only.

70. On a careful consideration of the evidence and the arguments of the learned counsel for the parties, we have come to the conclusion that the charge of bribery as based on the letter Ex. P. X. addressed to Shri Ram Chand has not been established against either of the two respondents, namely, Shri Amar Singh and Shri Partap Singh Kairon. The charge must therefore fail. We are of the opinion that the evidence also does not establish the charge of bribery against Shri Amar Singh in respect of the withdrawal of Vaid Kartar Singh from the election contest. The evidence in respect of both the charges mentioned in Para 7(III) and (IV) and List "C" and "D" being the same it is not necessary to discuss it separately over again in respect of the latter charge. Consequently, this charge must also fail.

71. The fourth instance of corrupt practice again concerns Shri Partap Singh Kairon along with Shri Amar Singh and forms the subject matter of the notice issued to him under Section 99 of the Act. The relevant allegations are to be found in Paras 7(V) and 7(VI), and Lists "E" and "F" of the petition. The allegations are that Shri Amar Singh and his agents and supporters called an election meeting in village Manjhi in Kandi area of the Constituency on 11th April, 1955 which was addressed by the Development Minister Shri Partap Singh Kairon and was attended among others by the Divisional Forest Officer and other Forest Officers concerned. At the said meeting, Shri Partap Singh Kairon offered the gratification of relaxation of restrictions on the grazing of goats imposed under the Indian Forests Act and Punjab Chos Act to the individual

voters present at the meeting including Shri Labhu Ram Lambardar of Doda village by ordering the Divisional Forest Officer to do the needful provided they voted for Shri Amar Singh. It was alleged that Shri Labhu Ram then presented an application which was received by the Minister at the meeting and passed on to the Divisional Forest Officer there and then with a direction that the restrictions should be relaxed forthwith. It was also alleged that in compliance with the aforesaid orders of Development Minister, the Divisional Forest Officer actually relaxed the restrictions by the end of April, 1955.

It was further alleged that inasmuch as Shri Labhu Ram was also asked by Shri Partap Singh Kairon to enlist the support of the voters of the Ilaga in favour of Shri Amar Singh, the corrupt practice committed by the respondents was not only one under Section 123(1) but also under Section 123(8) of the Act. As the charge under Section 123(8) was not pressed, the same being clearly un-sustainable in law, nothing more need be said about it.

72. The defence taken by Shri Amar Singh as well as Shri Partap Singh Kairon is that no such meeting as alleged was held at Manjhi village nor was any such gratification offered by Shri Partap Singh Kairon or by any one else on behalf of Shri Amar Singh or with his consent or connivance. With reference to these allegations Shri Partap Singh Kairon made the following statement as a court witness:—

"I do not remember if on 11th April 1955 I addressed any meeting in village Manjhi of Hoshiarpur district. It is absolutely incorrect that in any such meeting I exhorted the audience to vote for the Congress and that their grievances in respect of the forest would be redressed and invited their grievances. The application Ex. P.W. 51/1 was presented to me and on this I did pass the order Ex. P. W. 51/A. But I do not remember where and under what circumstances this application was made. I addressed several meetings in Hoshiarpur District during those days in connection with the bye-election."

The petitioner himself has no knowledge of any such meeting. He however examined Col. Amar Nath (P.W. 45), Bhag Singh (P.W. 47) and Shri Hans Raj (P.W. 50) in support of the allegations. Of these Col. Amar Nath stated that he was present at the meeting which was addressed by Shri Partap Singh Kairon. He also stated about the application presented by Labhu Ram. His version of the speech of Shri Partap Singh Kairon however makes it clear that neither any promise was made nor any condition was laid down for the removal of the difficulties experienced by the people of the Ilaga. All that Shri Partap Singh Kairon said in his speech was that he reminded the audience about the services rendered by the Congress and the sacrifices made by its followers in winning the country's freedom and then asked them to support the Congress and vote for its candidate. He asked the people that if they had any difficulties which the Government could remove, the same would be removed.

This is wholly innocuous speech to which no objection can be taken at all.

Bhag Singh (P.W. 47) gave a totally different version of the speech. He also did not make any mention of Labhu Ram.

Shri Hans Raj (P.W. 50) gave an altogether different version of the speech which if true, would certainly bring it within the mischief of Section 123(1) of the Act. He is however a thoroughly untruthful witness as would appear from his statement in cross-examination and we cannot therefore rely upon the evidence of both these witnesses who were also active workers of Vaid Kartar Singh in the bye-election in dispute.

The petitioner did not examine Labhu Ram who would have been the best witness to prove these allegations. His reason for not examining him is that he being a Lambardar of a village could not be expected to depose against a Minister of the State especially when he himself was also implicated in the commission of the corrupt practice. The explanation is not at all satisfactory.

73. Shri Partap Singh Kairon in his defence examined Sh. Satyapal Singh (R-1/W-28) of Bassi Ghulam Hussain and Shri C. M. Sethi (R-1/W-29) who was Divisional Forest Officer at Hoshiarpur from March, 1954 to February, 1959. Both these witnesses denied that any meeting was held at Manjhi on 11th April, 1955.

In cross-examination Shri C. M. Sethi admitted that on 11th April, 1955, Shri Partap Singh Kairon had visited the Kandi area especially the Doda and Satyal forests and that village Manjhi is an intermediate village between the two forests. He however stated that the Ministerial party had made a detour of the area by taking the jeep through Chos without visiting any villages on the way. As regards the application (Ex. P.W. 51/1) he stated that the same was handed over to him by Shri Partap Singh Kairon at the P.W.D. Rest House, Hoshiarpur on 11th April, 1955 at about 8 A.M. He gave a detailed account of how Shri Labhu Ram accompanied by some others came to the Rest House, how he asked Labhu Ram what the application was about, how on seeing the application he told Labhu Ram that it was the settled policy of the Government to lift the restrictions and that he himself would have done for him all that he wanted the Minister to do, only if a representation had been made to him. Labhu Ram however insisted upon presenting the application to the Minister and therefore the witness asked the Minister's P.A. to take the application to the Minister. He stated that shortly after the P.A. took the application to the Minister, he was called in and the application was handed over to him with the following endorsement by the Minister (Ex. P.W. 51/A).

"D.F.O. please look into this and report"

Sd./- Partap Singh  
11-4-55.

He further stated that Labhu Ram never went in to see the Minister and that when he (the witness) came out of the room he told Labhu Ram that he had been directed to look into the application. Upon this Labhu Ram went away. Shri Sethi then mentioned the various that were taken before the final orders relaxing the restrictions were passed. Exs. P.W.35/3 to P.W.35/9 are certified copies of the orders and the inter-departmental correspondence which resulted in the final orders being passed on the subject. Earlier P.W. 40 Attar Singh who was Range Officer, Hoshiarpur at the relevant time had also stated that on the representations of some of the villagers grazing concessions were given to them as a matter of routine but he could not say when that was done. Learned counsel for the petitioner was very keen to summon and examine the Closure Files relating to these villages and we permitted him to do so. An examination of these files however did not reveal anything to which the learned counsel could refer with some advantage to his case; if any thing, these files on the contrary supported the evidence of Shri C. M. Sethi that the imposition and removal or relaxation of restrictions under the Forests Act was a periodical affair and action was taken by the authorities from time to time as a matter of routine depending upon departmental requirements and the needs of the people in the area.

As regards relaxation of restrictions under the Punjab Chos Act, learned counsel for the parties could neither produce the Act before us nor could they tell us what these restrictions were and what was the nature of relaxation that was granted. As the learned counsel for the petitioner did not pursue this matter further, we need not say anything more on the subject.

74. This being the state of evidence, even if it were to be found that an election meeting had in fact been held at Manjhi on 11th April, 1955 which was addressed by Shri Partap Singh Kairon, it would be difficult to go beyond that and to hold that the Minister did ask the persons present at the meeting to vote for Shri Amar Singh as a condition for the relaxing of the restrictions or that the lifting of restriction was an offer or promise made to the voters to induce them to cast their votes in that particular manner. As regards the offer and promise made to Labhu Ram and the application made by him in that behalf, our finding is that the application was not made at a meeting held at Manjhi nor was it in response to a promise or assurance held out by Shri Partap Singh Kairon. As a matter of fact, after Shri Harbans Singh Doabia had addressed us on the whole case, Shri Shamsher Singh Bedi, learned counsel for the petitioner did not press this charge in his final reply to the arguments of Shri Doabia. The result is that this charge must also fail.

75. The 5th instance of the corrupt practice alleged by the petitioner relates to the installation of a water pump near the Sunehri Masjid, Hoshiarpur. The allegations as made in Para 7 (VIII) and the list "H" of the petition, are that a dispute regarding the installation of a water pump near the Masjid was going on between the petitioner and some persons in the locality, the petitioner being opposed to such installation, that on 6th or 7th April, 1955 Shri Amar Singh who was a member of the Municipal Committee, Hoshiarpur accompanied by his agents

and supporters, Sarvashri Ram Parkash and Suraj Parkash who were also members of the Municipal Committee, Hoshiarpur and workers of the Congress, approached the persons in the locality and promised that they would get the Municipal authorities to instal a water pump immediately provided they agreed to cast their votes in favour of Shri Amar Singh. It was further alleged that in order to fulfill his promise a resolution was actually passed on 12th April 1955 by the Municipal Committee sanctioning the installation of the water pump at the site selected by Shri Amar Singh. The allegations were denied by Shri Amar Singh in his written statement and he averred that the installation of the water pump had nothing to do with the election, as such pumps were installed by the Municipal Committee in various parts of the town. He also averred that Shri Ram Parkash and Shri Suraj Parkash were not his agents or supporters. On the other hand the District Congress Committee of which he was the President had recommended to the Provincial Congress Committee that Shri Suraj Parkash be removed from the Congress organization for having opposed Shri Amar Singh in his election. He also denied having approached the voters with any such offer or promise. Only three witnesses, viz. Shri Basant Lal (P.W. 46), Shri Ramji Das (P.W. 25) and Shri Balu Ram (P.W. 20) were examined by the petitioner in this behalf. The evidence of Basant Lal does not at all support the petitioner's case. He was a Member of the Municipal Committee, Hoshiarpur who along with some other members had signed the representation (Ex. P. 20) asking for installation of the pump. He stated that the subject of installation of the water pump had been pending in the Committee for more than one year before Ex. P. 20 was sent. At the meeting of the Committee, the site for installation of the pump near the Sunehri Masjid, was commended by him. He no doubt stated that before Ex. P. 20 was submitted, Shri Amar Singh had told him that if the water pump was installed in that locality, the people there would help him in the election. This statement is however not enough to make out a case of bribery against Shri Amar Singh for this may be a mere hope which Shri Amar Singh may have entertained about the likely effect of the action of the Municipal authorities in installing the pump. Besides, Shri Amar Singh did not hold any office in the Committee. He was neither its President nor Vice-President, nor is there anything to indicate that he used his position as a Member of the Committee in any manner or that the demand was not considered by the Committee on its merits. Balu Ram P.W. 20 and Ramji Das, P.W. 25, both of whom have their shops near Sunehri Masjid had however more direct evidence to give in support of the petitioner's allegations.

Both of them stated that they had been approached by Shri Amar Singh and his workers Shri Suraj Parkash and Shri Ram Parkash Manchanda for votes and that they told them that they would vote for Shri Amar Singh only if their difficulty about the installation of the water pump was removed. Shri Amar Singh thereupon told them that the water pump would be installed and consequently a water pump was installed before the polling day. Both of them admitted that it was a long-standing demand which was awaiting consideration by the Municipal Committee for over 3 years. The residents of the locality had approached other Members of the Committee also. It appeared that the dispute was about the site as there were differences between the old residents and the new settlers from Pakistan and ultimately the site suggested by Shri Amar Singh was accepted by all. Datta Ram (P.W. 1) produced the Municipal file relating to the installation of the pump.

To satisfy ourselves about the circumstances under which the hand water pump came to be installed in the locality, we looked into this file but we did not find anything in it which would indicate that any special interest was taken by Shri Amar Singh in this connection or that he alone was responsible for the decision of the Municipal Committee. We therefore hold that the evidence does not establish the charge of bribery against Shri Amar Singh in respect of this instance as well.

76. The last instance of corrupt practice relied upon by the learned counsel for the petitioner is in regard to the alleged falsity of the Return of Election Expenses filed by Shri Amar Singh. The allegations are contained in Para 7(xii) and List "L" attached to the petition. The allegations are that Shri Amar Singh had admitted in his Return of Election Expenses that he had used 15 motor vehicles for several days in connection with his election campaign but he had not shown in his return any amount on account of hire charges paid or incurred by him in respect of those vehicles. At reasonable market rate the hire charges for those vehicles for the number of days they remained in use would alone total up to a stupendous figure of Rs. 12000/- whereas Shri Amar Singh had shown a total expense of Rs. 7890/12/9 against the permissible limit of Rs. 12000/-. It is also alleged that besides these 15 motor vehicles Shri Amar Singh had also

made use of 25 other vehicles belong to various Transport Companies, but he had concealed the use of these vehicles from his return.

It is further alleged that Shri Amar Singh had also not given the names of headings of various posters issued by him and his agents and supporters.

It is stated that this has been done intentionally as the object was to keep out of the list a large number of posters which he had issued to promote his elections.

Lastly, it is alleged that Shri Amar Singh was having his election office in the first floor of a building which he had taken on rent from Messrs. Ishar Singh & Sons who were dealers in aerated waters. All his agents and supporters and workers were entertained with sweets and aerated waters etc. at the shop of Messrs. Ishar Singh & Sons and the expenditure on this item alone exceeded Rs. 2000 out of which a substantial amount remained unpaid to the said firm of suppliers. The Return filed by Shri Amar Singh however made no mention of the amount paid to the firm as well as that which was alleged to be still outstanding against him.

List "L" referred to a few other items of expenditure also, but the learned counsel for the petitioner abandoned those and confined his arguments to the allegations mentioned above only. We need not therefore state those here.

77. Shri Amar Singh's reply to these allegations was as follows:—

Re: Motor Vehicles

He denied that he had used any of the vehicles mentioned by the petitioner or that he had made any such admission in the Return of Election Expenses filed by him. The owners of those vehicles or their friends had brought the vehicles of their own accord as sympathisers and supporters of the Congress cause. He had never asked any one of them to bring those vehicles for his election purposes. He had simply provided them with petrol which too they were made to accept with great difficulty. He had never hired any such vehicle nor paid any hire. He denied that the vehicles were used continuously for long periods and contended that even according to the market rates the hire charges would not exceed Rs. 3,000 and although no hire was in fact paid or became payable on this account, even if this amount were to be added to the expenses, the total expenditure would still fall short of the maximum allowable under the law.

He also denied that he had used or engaged any vehicles belonging to the Transport companies named by the petitioner. Even if some such vehicles were used they were those which the owners or their friends had brought of their own accord and as such there was no question of concealing their use or expenditure from the Return.

Re: Posters

He denied that there was any concealment as alleged. It was submitted that it was also not necessary to give the names and headings of the posters in the Return. In any case all the amount spent on the posters had been correctly shown in the Return.

Re: Entertainment expenses

He denied that he had his election office in the building referred to by the petitioner or that any expenditure was actually incurred or any amount became payable on account of entertainment of his agents, workers or supporters with sweets and aerated waters etc. He therefore denied that the Return filed by him was false or irregular in any manner.

78. Legal requirements about the form and manner in which Returns of Election Expenses have to be lodged, are contained in Section 76 of the Act and Rule 112 of the Representation of People (Conduct of Elections and Election Petitions) Rules, 1951 read with Form 26 appended to Schedule 1 of the said Rules and the particulars mentioned in Paragraph 1 and 2 of Schedule IV. The Return is required to be lodged in Form 26 which gives the heads under which the particulars required under the Rules have to be filled in and shown. The case of the petitioner as presented by his counsel is, that in the Return of Election Expenses filed by Shri Amar Singh (Ex P.9), the total expenses shown by him are Rs. 7896-12-9 as against the permissible limit of Rs. 12,000. In the said Return a sum of Rs. 4065-12-0 has been shown as having been spent on supply of petrol to the motor vehicles for the number of days during which those vehicles remained in

use by Shri Amar Singh. (See Exs. P/6, P/7, & P/8). Multiplying the number of vehicles with the number of days each vehicle was in use, the total number of vehicle days would work out as 464. Considering the market rate of Rs. 15 on account of hire for each vehicle day, the expenditure under this head alone would come to Rs. 6,960. Then there were vehicles belonging to various Transport companies which were used by Shri Amar Singh but no expenditure for petrol or hire charges was shown in respect of those vehicles. According to the learned counsel, that will mean an extra expenditure of Rs. 5,040 thereby making a total of Rs. 12,000. This amount when added to the expenditure of Rs. 7,896-12-9 actually disclosed by Shri Amar Singh, would take the figure of total expenditure to Rs. 19,896-12-9 which is very much in excess of what is permissible under the law and would constitute major corrupt practice under Section 123(7) of the Act. Inasmuch as the Return (Ex P.9) does not show this huge amount of expenditure it is also false in material particulars which constitutes a minor corrupt practice under Section 124(4) of the Act.

To the contention of the Respondent Shri Amar Singh that he had not to pay any money to the owners or suppliers of those vehicles on account of hire charges as the same were brought by them without any request from him on account of his personal friendship and on account of the sympathies of those persons with the Congress Organization, the reply of the learned counsel for the petitioner was that even this would not save the Return from being false in material particulars. It was argued by the learned counsel for the petitioner that the expression "Receipts" as used in Form No. 26 which is the form in which the Return lodged by Shri Amar Singh (Ex. P.9) has been filled in, includes all moneys, securities and equivalents of money received from any person (including the candidate himself), club, society, or association in respect of any expenses, whether paid or remaining unpaid, incurred on account of, or in connection with, or incidental to the election. Even if one were to accept the version of the Respondent Shri Amar Singh as true, the gratuitous supply of motor vehicles by his friends and sympathisers would still be tantamount to receipts which are *equivalent of money* and inasmuch as the same have not been shown and included in the Return, there could be no doubt about its being false in material particulars. It is necessary according to the learned counsel that the candidate should show in his return not only the amount he has actually paid for the services rendered to him by people in connection with his election but also a reasonable amount by way of notional expenditure which he would have had to incur in case of services and supplies made gratis to him and such notional amount should also find mention under the head "Receipts" on account of its being something equivalent of money.

79. We regret we can neither accept the premises on which the above contentions of the learned counsel are based nor the conclusions which he seeks to draw from them. The petitioner has not led any evidence to establish that Shri Amar Singh hired any of the motor vehicles or paid any hire to anybody for the same. Shri Amar Singh is admittedly engaged in Motor Transport business. It is therefore not unusual that he should have several friends among those who are in the same trade. It may sound a little odd that those people should have permitted their vehicles to be used by Shri Amar Singh for so many days and he has neither examined any one of them as his witness nor has he given any further details about them. But the onus of proving that any expenditure by way of payment of hire was actually incurred by the Respondent and thus the Return filed by him was false, lay on the petitioner. He however did not produce any satisfactory evidence on the point. He no doubt made an attempt in that direction but the only witness he could get hold of, namely, Shri Gursharn Singh (P.W. 10) let him down rather badly and that put an end to his attempt. There is also no satisfactory evidence to show for how long each vehicle was kept in use, whether the use was continuous, or as and when the owner could spare it. In the absence of proper evidence, the explanation given by Shri Amar Singh cannot be held to be false and may even be true. The hire-rate of Rs. 15 per vehicle per day mentioned by the learned counsel for the petitioner is also not supported by any evidence. P.W. 10 Gursharan Singh gave the maximum rate as Rs. 10 per vehicle per day if the vehicle was put on the road and Rs. 8 if it was not put on the road. Considering that Shri Amar Singh was himself a Transport operator, it would not be improper to assume that he would not have had to pay more than Rs. 8 per day per vehicle for both kinds of uses. Even on the figures worked out by the learned counsel for the petitioner the total expenditure on this account would come to Rs. 3,712. That amount when added to the total expenditure return by the respondent would still keep the figures well below the maximum of Rs. 12,000, permitted under the rules. For the additional amount of Rs. 5,040 which the learned counsel for the petitioner wants us to add on account of hire charges payable to the Transport Companies named by the petitioner, there is absolutely no warrant in evidence. As explained by Shri Amar Singh in his

written statement the motor vehicles belonging to these companies were the same which his friends and sympathisers had brought for use. The petitioner examined P.W. 11 Tirath Ram, Motor Taxation Clerk in the office of the Deputy Commissioner, Jullundur and P.W. 26 Karan Dass Singh, Motor Licensing Clerk in the office of the Deputy Commissioner, Hoshiarpur to falsify the explanation given by Shri Amar Singh by proving the ownership of some of the vehicles but the evidence is hardly sufficient to allow any definite finding to be recorded on its basis.

80. In support of his second argument that reasonable hire even if it was not actually paid, should have been shown under the heads "Receipts" as well as "Expenses", the learned counsel for the petitioner relied upon a decision of the Election Tribunal, Tanjore in the case of *M. R. Meganathan Vs. K. T. Kosalram and others*<sup>20</sup>, where the learned members of the Tribunal observed as follows:—

"In view of our above finding, it becomes unnecessary to decide whether the reasonable hire of these cars even if they were not let out for hire should be added to the election expenses of the 1st Respondent. The matter is not free from difficulty. The better view appears to be that the reasonable hire for the cars, even if none was in fact paid, should be included in the election expenses, for otherwise, a candidate with rich and influential friends and supporters would be in a position of vantage compared to his less fortunate rival and the provisions of law as to the maximum of election expenditure could easily be evaded."

It is obvious from the above quotation that the learned members of the Tribunal were not expressing any definite opinion as the point was not necessary for the decision of the case before them. We also find, if we may say so with great respect to the learned members of the Tribunal, a certain amount of contradiction between the dictum in the above-quoted passage and what they said a few lines below. While dealing with the question as to whether the candidate was bound to include in his expenses the notional charges of hire in respect of his own cars the learned members observed as follows:—

"It is a contradiction in terms to say that a man hires his own property. When the use is of one's own cars, there is no hiring and no payment of hire and there is therefore no question of the amount of hire being included in the return. Faced with this difficulty, the learned advocate for the petitioner put forward an alternative argument and contended that the value of the depreciation atleast should be shown as expenses. For one thing, it cannot be described as expenses incurred; for another, it should be difficult to estimate unless it is calculated on a rough and ready basis at a flat rate of so much per mile. The Act and the Rules themselves do not indicate any basis and if the candidate himself were to adopt any rough and ready basis, he might still be running a grave risk if the Tribunal should ultimately find that the rate of depreciation adopted by him is even somewhat low; on the other hand, if he adopts too high a rate of depreciation out of excessive caution, it would deprive him of a portion of the permissible expenditure for other purposes. The candidate would thus be placed under great handicap and uncertainty. Further, the argument carried to its extreme would mean that the loss of the candidate's income for the period of election and the deterioration in his health such as might necessitate medical expenses should all be estimated and included in the expenses. In the absence of any principle or authority to the contrary, we have no hesitation in holding that neither the reasonable hire nor the depreciation value should be included in the expenses."

81. If the test according to the learned members is whether the expense had actually been incurred or not, then we fail to see any difference in principle between the use of his own cars by a candidate from that of his friends' cars for which no hire charges are either paid or claimed. A view contrary to that held by the Tanjore Tribunal has been taken by the Rajasthan High Court in the case of *Sheopat Singh Versus Harish Chandra*<sup>21</sup> where a Division Bench of the said High Court consisting of K. N. Wanchoo C.J. (as his Lordship then was) and Jagat Narayan J. observed as follows:—

"This brings us to the next point which is, that assuming that a vehicle is lent gratuitously to a candidate, is reasonable hire for the vehicle to

(<sup>20</sup>) IX E.L.R. 242 at 270.

(<sup>21</sup>) XVI E.L.R. 103.

be shown as election expenditure? In other words, is the reasonable hire of a vehicle lent gratuitously an expenditure which the candidate should be presumed to have incurred or authorised? To our mind, it is not. One incurs expenditure when one actually spends money, one authorises expenditure when one incurs a pecuniary liability. In borrowing a vehicle, which the lender lends gratuitously, no pecuniary liability is incurred."

82. The Rajasthan Court relied for its decision on a judgment of the Supreme Court in the case of *Rananjaya Singh Versus Baijnath Singh and others*<sup>22</sup>. The question which their Lordships were deciding in that case was whether the candidate had committed any corrupt practice because a number of persons who were employed in the estate of his father had worked for him in elections and if these persons and the remuneration they received from his father were included, the maximum number of persons that candidate might employ on payment and the maximum expenditure he might incur under the provisions of rules 117 and 118 would be exceeded. Their Lordships held as follows:—

"It is clear to us that qua the appellant these persons were neither employed nor paid by him. So far as the appellant was concerned they were mere volunteers and the learned advocate for the respondent admits that employment of volunteers does not bring the candidate within the mischief of the definition of corrupt practice as given in Section 123(7). The learned advocate, however contended that such a construction would be against the spirit of the election laws in that candidates who have rich friends or relations would have an unfair advantage over a poor rival. The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the sections of the Act and the Rules made thereunder. If all that can be said of these statutory provisions is that construed according to the ordinary, grammatical and natural meaning of their language they work injustice by placing the poorer candidates at disadvantage the appeal must be to the Parliament and not to this court."

83. In our opinion the position with regard to use of motor cars and vehicles voluntarily brought by friends and relations can hardly be different.

Similar view was taken by the Bombay Election Tribunal in the case of *Mehta Gordhan Dass Girdhari Lal Versus Chavada Akbar Delumiyar and others*<sup>23</sup> and later on by a Single Member Election Tribunal at Chandigarh in the case of *Sardar Dayal Singh versus Sardar Surjit Singh Majitha*<sup>24</sup>, where on a construction of the relevant provisions of the Act and the Rules as amended in 1956 it was held that a candidate who was allowed by his family concern of which he was the Managing Partner to use a number of motor vehicles for his election propaganda without any charge or hire, was not bound to include a notional hire or charge for the use of the vehicles in his return of election expenses as the candidate had not incurred or authorized any expenditure by way of charge of hire for vehicles. The changes made by the amending Act in 1956 have not made any material difference to the provisions as they stood in the un-amended Act of 1951. The decision is therefore relevant to the point arising in the instant case.

84. The next case which has a bearing on the matter under discussion is the case of *M. Muthiah Versus A. S. Subharaj*, a decision of the Madras High Court. Although the evidence in that case indicated that the cars borrowed from friends were used by the candidate only when the owners did not need them and the candidate returned the cars whenever the friends required them without draining all the petrol he put in the cars, the principle accepted by the court was that the candidate was not required to include in his election expenses the entire cost of the petrol or a proportionate part of the salary of the drivers. As regards the hire charges their Lordships observed that the friends and relatives were not hiring out their cars and in fact they would consider it an insult if the respondent paid any remuneration to their paid drivers.

In fact as regards expenditure incurred for the candidate by volunteers, the Madras High Court has consistently taken the view that where persons interested in a candidate spend money to help the candidate in his election but the candidate

(22) X E.L.R. 129 at 134.

(23) VII E.L.R. 374.

(24) XIX E.L.R. 305.



himself has not authorized and does not eventually meet such expenditure in his return of election expenses; and he would not be guilty of the corrupt practice under Section 123(7) of the Act if he omits to include such expenses in his return. (See *G. Vasantha Pai versus A. Srinivasan and others*<sup>26</sup> following *Narasinham Versus Natesan Chettiar*<sup>27</sup> and *Muthiar Chettiar versus Saw Ganesan*<sup>28</sup>).

85. We are satisfied that in the circumstances of this case it was not necessary for Shri Amar Singh respondent to include reasonable notional hire for the vehicles used by him under either of the two heads of "Receipts" and expenditure in Ex. P.9 as free service of friends' vehicles was neither money nor its equivalent which had been actually received by him nor was it an item of expenditure actually incurred by him in connection with his election.

86. *Re: Posters.*—There is no reliable evidence to show that expenses relating to any particular poster were not included in the Return. Learned counsel for the petitioner has invited our attention to a case reported at page 820 of Indian Election Cases (1935-1951) by Sen and Poddar where the learned Commissioners relying upon an earlier decision of their's held that the intention of the framers of the rules appeared to be that details in respect of each electioneering pamphlet and other items of printing should be mentioned and that mere repetition of the expression "Cost of printing" or mention of a lump sum was not sufficient. It is perhaps desirable that this should be done because if the intention were otherwise the framers of the rules would not have expressly mentioned in Note 2 under the Head "Expenses" in Form 26 that lump sums could be shown in case of payments made on account of postage and telegrams but in case of other items, it has been stated that each payment shall be entered separately. But we are not satisfied that the irregularity if any, is such as to render the Return false in material particulars.

87. *Re: Entertainment expenses.*—A number of witnesses have been examined by the petitioner to prove that Shri Amar Singh had his election office in the building of M/s. Ishar Singh & Sons. P.W. 4 Waryam Singh, P.W. 19 Amar Nath Harish, Advocate, P.W. 21 Dwarka Dass, P.W. 22 Madan Lal, P.W. 23 Tirath Ram and P.W. 36 Niranjan Singh Singha have all deposed to this fact. Shri Amar Singh has in turn examined Ajit Singh R.W. 1, Rampal R.W.2, Shri Nand Kishore, Pleader, R.W. 4 and Dr. Lal Chand Sharma, R.W. 18 to prove that his election office was in Railway Mandi, Hoshiarpur and not in the building of Ishar Singh and Sons where according to the witnesses was the office of the City Congress Committee alone. As the expenses relating to the maintenance of that office are not the subject matter of charge against the Respondent, it is not necessary for us to record a definite finding on the point as to whether it was the office of the City Congress Committee or the election office of the Respondent, more so when some of the petitioner's own witnesses admitted that the place was the office of the City Congress Committee, Hoshiarpur (See P.W. 17 etc.). Even if Shri Amar Singh was maintaining a separate election office in Railway Mandi, Hoshiarpur, some election activity was being carried on in the chaubara above the Soda-water factory of Ishar Singh & Sons. P.W. 4 Waryam Singh deposed that he was the owner of the Soda-water factory which was run in the name of Ishar Singh & Sons on Railway Road, Hoshiarpur. Shri Amar Singh had taken from him the Chaubara above his factory on a monthly rent of Rs. 30. When he took the Chaubara on rent he told the witness that he was to supply things as ordered by his men, *Viz.*, Wazir Chand Sikka, Harbans Singh Parmar, Rampal and Lal Chand and that he would be responsible for making payments. According to him, the respondent maintained his office in those premises from 1st of April, 1955 to 13th or 14th May, 1955. During this period, articles of the value of Rs. 3,187-10-6 were supplied on the basis of the chits signed by the above named 4 persons. The witness produced some of those chits which were marked as Exs. P.W. 4/1, to P.W. 4/5 but with regard to other chits he stated that the same were returned by the witness when the balance for Rs. 2,516-10-6 (Ex. P.W. 4/6) was struck and signed by Shri Amar Singh. The total (Ex. P.W. 4/6/1) was verified by Harbans Singh, Accountant of Shri Amar Singh and was signed by Harbans Singh in the presence of the witness.

The witness also produced the Memo Ex. P.W. 4/7 containing the details of the supplies which according to him were verified by Harbans Singh in Ex. P.W. 4/6/1. He also produced the receipted bill Exs P.W. 4/8 to P.W. 4/11 and the bill Ex. P.W. 4/12 the amount of which, he alleged, was included in the total verified

(25) XVIII E.L.R. 73.

(26) XXII E.L.R. 221.

(27) XX E.L.R. 1.

(28) XXI E.L.R. 215.

amount as entered in Ex. P.W. 4/6/1. The amounts entered in P.W. 4/7 were partly in respect of things supplied by the witness and partly on account of things paid for by the witness on behalf of the Respondents. The amounts entered in P.W. 4/7 in respect of loud speakers and electric charges had still to be paid by the witness to third persons who rendered services to the respondent at the request of the witness. The witness claimed that a sum of Rs. 2,516-10-6 was still outstanding against Shri Amar Singh which he had refused to pay in spite of notice of demand dated the 18th April, 1956 (Ex. P.W. 4/13). Shri Amar Singh replied to this notice through his lawyer Shri Dilbagh Singh Advocate (Ex. P.W. 4/15). Rakha Ram P.W. 17 deposed that during the days of the by-election he was running a small hotel in the building of Waryam Singh. He had been paid about Rs. 350 to 400 in cash by Shri Waryam Singh while a sum of Rs. 360 was set off against the rent due by him to Shri Waryam Singh. These payments were on account of supply of catables by him to Congress leaders from outside who used to visit the Congress office in Waryam Singh's building. The supplies were made at the instance of Shri Waryam Singh, Shri Amar Singh and Shri Wazir Chand Sikka against chits which he had handed over to Shri Waryam Singh who used to maintain an account of the supplies.

88. Madan Lal P.W. 22 deposed to having carried out the job of electric fittings at several election meetings which were held during the days of the bye-election. He carried out these fittings at the instance of Shri Waryam Singh and Shri Amar Singh and stated that he had received a sum of Rs. 59/14/- from Shri Waryam Singh. He further stated that at the time he was asked to do the work, he was told by Shri Amar Singh that the payment would be made to him by Shri Waryam Singh.

89. Shri D. R. Nanda, P.W. 53, Handwriting Expert was examined to prove the signature of Shri Amar Singh on the bill P.W. 4/6 by comparing it with the undisputed signature of Shri Amar Singh on the written statement and his specimen signatures taken before us on 11th May, 1956. He gave it as his opinion that the writer of all the signatures was the same person.

Mehta Ghansham Das, P.W. 42 stated that Shri Amar Singh had gone into the accounts with Shri Waryam Singh and put his signature in the Bill Book of the latter in his presence. This witness was not cross-examined on behalf of Shri Amar Singh presumably because the petitioner's counsel did not ask him to refer to the Bill Book and identify the signature of Shri Amar Singh. Learned counsel for the petitioner told us in the course of his arguments that the signature was not put to the witness because he was illiterate.

90. Now there is no doubt that Shri Amar Singh has not included any sum of money which according to the above evidence was spent either on the entertainment of persons visiting that office or on supply of goods and services in connection with the election.

What has therefore to be seen is whether there is satisfactory evidence to prove that expenditure was actually incurred by or on behalf of Shri Amar Singh by persons authorized by him to do so. Rampal R. W. 2 denied having issued any chits for providing refreshments to people visiting the election office of Shri Amar Singh. He denied that Shri Amar Singh had an office in the Chaubara of Waryam Singh. He also denied having issued any chits and none have been produced by Waryam Singh and the petitioner. Harbans Singh R. W. 3 also denied having issued any chits to provide meals or refreshment to any worker. He also stated that the bill Ex. P. W. 4/8A never came to his notice. This bill does not even purport to have been verified or signed by this witness. He further stated that the bill Ex. P.W. 4/6 did not appear to have been signed by Shri Amar Singh. He also denied having worked for Shri Amar Singh during the election. Strangely enough, neither party asked him any question regarding P. W. 1/6/1, alleged to have been verified and signed by him. Dr. D. N. Goyal R. W. 24 who examined the signature of Shri Amar Singh on P. W. 4/6 and compared it with his undisputed signature controverted the opinion of Shri D. R. Nanda P. W. 53, the expert who gave evidence for the petitioner and definitely stated that the bill did not bear the signature of Shri Amar Singh. Shri Amar Singh R. W. 25 also denied his signature on the bill.

91. It is amazing that Shri Waryam Singh had produced only a few of the chits which are allegedly signed by the persons authorized by Shri Amar Singh. Why should he have parted with the other chits when the amount due to him had not been fully paid? He claimed that out of a total sum of Rs. 3,187-10-6, a sum of Rs. 2,516-10-6, was still due to him. If that were so, even if he had returned some chits to Shri Amar Singh he would have insisted upon retaining with

himself chits in respect of the amount which was still outstanding. He has also not given any explanation why he was paid only a small sum of Rs. 671, when his total expenditure was Rs. 3,187-10-6. According to Rakha Ram, P. W. 17, Waryam Singh had paid him from his own pocket a sum of Rs. 350, to 400, in cash and had allowed a set off against rent to the extent of Rs. 360. In ordinary course of events, he would have insisted upon being re-imbursed atleast to the extent of what he had spent from his own pocket. He would have insisted upon similar re-imbursement in regard to what he had paid to Madan Lal P. W. 22. The details of expenditure in P. W. 4/7 show that a considerable portion of the expenditure related to supplies and services rendered by persons other than Waryam Singh.

It is therefore highly improbable that he would allow a large sum of Rs. 2,516-10-6, to remain outstanding and be content with a small payment of Rs. 671, only. It is also highly improbable that Shri Amar Singh would get the account verified, affix his signature to the bill and yet refuse to pay the amount. No explanation has been given by Waryam Singh for this strange behaviour on the part of Shri Amar Singh. If the account was false or exaggerated, Shri Amar Singh would have in the normal course refused to accept and sign it but there was no reason why he should have denied his liability for the payment of the amount after having accepted it once. The addition of this amount would not have swelled the total figure of expenditure beyond the permissible limit. He could have therefore easily included this amount in his return if it was really incurred or due. It is also significant that no notice was served on him by Waryam Singh till after the proceedings on the election petition had commenced. Learned Counsel for Shri Amar Singh contends that Waryam Singh belongs to a faction among the Congress members of Hoshiarpur who are opposed to Shri Amar Singh and that he had not only signed a representation against the election of Shri Amar Singh as President of the District Congress Committee, Hoshiarpur but had even visited the Congress High Command at Delhi in that connection. He has, therefore, prepared false accounts and has forged the signatures of Shri Amar Singh and others. It is not necessary for us to go to that length as we are of the opinion that the evidence led by the petitioner is not sufficient to establish that Shri Amar Singh had authorized or incurred any such expenditure as alleged. We are also of the opinion that mere non-inclusion of this amount would not constitute a corrupt practice. In order that a return may be false in material particulars for the purposes of Section 124(4) of the Act the return must be deliberately false i.e., made with a corrupt motive.

92. On the evidence before us, it cannot be said that even if the expenditure was incurred, its omission from the return was prompted by any corrupt motive. It is not alleged that any item of expenditure was of a character which would have exposed the respondent to some further charge or would furnish evidence of some other corrupt practice. It is also not alleged, and indeed it could not be, that the inclusion of the amount would have increased the total expenditure to a figure in excess of what the law permits.

We, therefore, hold that the evidence does not establish that the respondent Amar Singh exceeded the maximum expenditure of Rs. 12,000, or that he was guilty of any corrupt practice under Section 123(7) of the Act; nor does the evidence establish any charge under Section 124(4) against him. There is not even an allegation that it materially affected the result of the election so far as the petitioner is concerned.

In view of the above, we decide Issue No. 1 in favour of Respondent Amar Singh and against the petitioner.

#### *Issue No. 2.*

93. In view of our decision on Issue No. 1, this petition has to be dismissed and the notice issued to Shri Partap Singh Kairon and Master Daljit Singh have to be discharged.

## Issue No. 3.

94. The result is that the petition fails and is hereby dismissed. The notices issued against Shri Partap Singh Kairon and Master Daljit Singh under Section 99 of the Act, are hereby discharged. In view of all the circumstances of the case, the parties are left to bear their own costs.

Sd./- HARDAYAL HARDY,      Sd./- K. S. CHADHA,  
(Member).                      (Chairman)  
18-7-61.

Sd./- B. P. PURI,  
(Member).  
18-7-61.

Pronounced in the presence of the petitioner. Shri Balbir Singh and the Respondents Sarvshri Amar Singh and Master Daljit Singh.

Sd./- HARDAYAL HARDY.      Sd./- K. S. CHADHA,  
18-7-61.                      Chairman.  
18-7-61.

Sd./- B. P. PURI,  
Member.  
18-7-61.

**Camp Hoshiarpur.**

[No. 82/14/55.]

C. B. LAL, Under Secy.

### MINISTRY OF HOME AFFAIRS

*New Delhi, the 21st July 1961*

**S.O. 1931.**—In exercise of the powers conferred by sub-section (1) of section 2 of the Police Act 1888 (3 of 1888), and in partial modification of this Ministry's notification No. 12/9/60-T, dated the 16th July, 1960, the Central Govt. hereby directs that the areas of the State of Mysore to be included in the Special Police District shall be the following:—

The following villages of Belgaum District.

1. Morab.
2. Betageri.
3. Chigule.
4. Kakati.
5. Bailur.
6. Sonarwadi.
7. Uchavade.
8. Nittur.
9. Huland.
10. Karanjawade.
11. Sada.
12. Mana.
13. Talawade.
14. Golyall.
15. Torali.
16. Devachhatti.
17. Habanatti.
18. Kalyall.
19. Katagall.
20. Amte.
21. Kalamani.
22. Tirthkunde.
23. Jamboti.
24. Kalanalknatti.
25. Gavase.
26. Betane.
27. Kankumbi.
28. Chikle.

29. Parwad.
30. Chorla.
31. Amgaon.
32. Chapoli.
33. Kapoli.
34. Kalgirl.
35. Kusmali.
36. Wadgaon.
37. Daroil.
38. Budse.
39. Khrwale-K-Gunjli.
40. Amboli.
41. Kabanali.
42. Kavale.
43. Malvi.
44. Kanjale.
45. Nerse.
46. Kongala.
47. Pastoli.
48. Gavali.
49. Tanali *alias* Bhimgad.
50. Holda.
51. Talewadi.
52. Kelli.
53. Mendli.
54. Deogaon.
55. Hemadage.
56. Pall.
57. Jamgaon.
58. Abanali.
59. Shirol.
60. Asoga.
61. Nilawade.
62. Mugawade.
63. Krishnapur.
64. Karanjali.
65. Londa.
66. Tivoli.
67. Teregali.
68. Kumaratwadi.
69. Dongargaon.
70. Ambewadi.
71. Kirwale.
72. Varkhad Pitiya.
73. Mohishet.
74. Akrali.

The following villages of North Kanara District.

(a) Under Supa Police Station.

1. Adangaon.
2. Adulli.
3. Amarde.
4. Ambelli.
5. Amshet.
6. Asangaon.
7. Asu.
8. Aveda.
9. Badagund.
10. Bapeli.
11. Bhamrde.
12. Birode.
13. Bori.
14. Bamanwadi.
15. Chapkhand.
16. Chapoli (Amarde).
17. Chaphalli.
18. Dongarwada.
19. Donshet.
20. Durgl.

21. Gavegali.
22. Hatkhumba.
23. Jagalbet.
24. Jamagalli.
25. Joida.
26. Karanjoda.
27. Kasarwadi.
28. Kevarle.
29. Khodli.
30. Konada.
31. Konda.
32. Kondape.
33. Kukdalli.
34. Kikere-Kurwade.
35. Kumbral.
36. Kundalgaon.
37. Kurandi.
38. Maisoda.
39. Malambe.
40. Mavalinge.
41. Mirajkumball.
42. Nogoda.
43. Nagare.
44. Panjeli.
45. Pardhanl.
46. Pate.
47. Panakhand.
48. Phansolli.
49. Pusheli.
50. Sanjoida.
51. Sangve.
52. Shindolli.
53. Shingargaon.
54. Shirgure.
55. Sulawall.
56. Supa.
57. Timboli.
58. Usoda.
59. Wade.
60. Waini.
61. Valjgaon.
62. Varande.
63. Velip-Kumbell.
64. Viral.
65. Virampali.
66. Virkhol.
67. Virnolli.

(b) Under Kumbarwada Out-Post.

1. Amgaon.
2. Amboli.
3. Anshi.
4. Avurli.
5. Badpoli.
6. Bidoli.
7. Birkhol.
8. Bedasgadde.
9. Chafer.
10. Chapoli (Kalsal).
11. Chinchkand.
12. Deriya.
13. Devulli (Joida).
14. Gangoda.
15. Dodshet.
16. Gund.
17. Hebbal.
18. Hudsa.
19. Jalwalli.
20. Kalamkhand.

21. Kalsai.
22. Kariyadi.
23. Katcl.
24. Kateli.
25. Kavale.
26. Kodtalli.
27. Kumbell.
28. Kundal.
29. Nandigadde.
30. Neturga.
31. Nigundi.
32. Nujji.
33. Sannamaga.
34. Shevli.
35. Sheroli.
36. Shivpur.
37. Terali.
38. Tinaikhand.
39. Tulasgeri.
40. Ulvi.
41. Wadkul.
42. Yermukh.

(c) Under Castle-Rock Out-Post.

1. Akheti.
2. Anmode.
3. Assuli.
4. Atali.
5. Aveda-Popalwadi.
6. Bajarkumang.
7. Bandode.
8. Borgali.
9. Chandwadi.
10. Devull (Tinalghat).
11. Diggi.
12. Durg.
13. Ghavane.
14. Eveli.
15. Kalambull (Castle-Rock).
16. Kamre.
17. Karambal.
18. Kasarle.
19. Konshet.
20. Kungini.
21. Kuvasi.
22. Ninnur.
23. Palde.
24. Payaswadi.
25. Pisose.
26. Rangruk.
27. Titwall.
28. Warlewadi.
29. Watle.
30. Vilayedabe.
31. Viranjole.

**The following villages of North Kanara District.**

(a) Under Chitakula Police Station.

1. Angadi.
2. Aray.
3. Bolshitta.
4. Chitakula.
5. Ghadsal.
6. Gopshitta.
7. Halgejug.
8. Hankon.
9. Hankonjug.
10. Hosali.

11. Hotegali.
12. Kanasgiri.
13. Kolge.
14. Madhewada.
15. Maingini.
16. Majali.
17. Mudgeri.
18. Sawantwada.

(b) Under Kadra Out-Post.

1. Balemane.
2. Bhaire.
3. Devkar.
4. Gotegali.
5. Goyar.
6. Hartuge.
7. Kadiye.
8. Kadra.
9. Kaiga.
10. Kamargaon.
11. Kater.
12. Kerwadi.
13. Kuchegar.
14. Lande.
15. Mallapur.
16. Ulge.
17. Virje.

[No. 33/24/61-P.V.]

P. K. DAVE, Dy. Secy.

---

*New Delhi, the 8th August 1961*

**S.O. 1932.**—In pursuance of clause (1) of article 258 of the Constitution, the President, with the consent of the Government of Kerala, entrusts to that Government the functions of the Central Government in relation to any matter specified in sub-clauses (c) and (d) of clause (8) of section 2 of the Indian Official Secrets Act, 1923 (19 of 1923).

[No. 21/38/60-Pol(I).]

N. SAHGAL, Jt. Secy.

---

*New Delhi, the 19th August, 1961.*

**S.O. 1933.**—In exercise of the powers conferred by clause (2) of article 77 of the Constitution, the President hereby makes the following rules further to amend the Authentication (Orders and other Instruments) Rules 1958, published with the notification of the Government of India in the Ministry of Home Affairs, No. S.O. 2297 dated the 3rd November, 1958, namely:—

1. These rules may be called the Authentication (Orders and other Instruments) Third Amendment Rules, 1961.

2. In rule 2 of the Authentication (Orders and other Instruments) Rules, 1958—

(i) in clause (t), the word “or” shall be inserted at the end;

(ii) after clause (t), the following clause shall be inserted, namely:—

“(u) in the case of orders and other instruments relating to the Legislative Department, Ministry of Law, by the Director (Administration and Co-ordination) in that Department.”

[No. F. 3/12/61-Pub.I.]

FATEH SINGH, Jt. Secy.



**CABINET SECRETARIAT****(Department of Statistics)***New Delhi, the 10th August 1961*

**S.O. 1934.**—In pursuance of sub-rule (2) of rule 11, Clause (b) of sub-rule (2) of rule 14 and sub-rule (1) of rule 23 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, the President hereby makes the following amendments in the Schedule to the notification of the Government of India in the Cabinet Secretariat No. S.R.O. 633, dated the 28th February, 1957, namely:—

In the said Schedule,—

(I) in Part I—General Central Service, Class II,—

under the heading "Directorate of National Sample Survey", against the item "All Gazetted posts" for the existing entry "Joint Secretary" in columns 2 and 3, the entry "Additional Secretary, Department of Statistics", shall be substituted;

(II) in Part II—General Central Service, Class III,—

under the heading "Directorate of National Sample Survey", against the item "All posts in Headquarters and Field Offices" for the existing entry, "Joint Secretary" in column 5, the entry "Additional Secretary, Department of Statistics" shall be substituted.

[No. 18/9/60-Estt.III/II.]

M. BALAKRISHNA MENON, Under Secy.

**MINISTRY OF FINANCE****(Department of Expenditure)***New Delhi, the 9th August 1961*

**S.O. 1935.**—In exercise of the powers conferred by the proviso to article 309 of the Constitution, and of all other powers enabling him in that behalf, the President hereby makes the following rules, namely:—

1. **Short title and commencement.**—(1) These rules may be called the Central Cost Accounts Pool (Recruitment and Conditions of Service) Rules, 1961.

(2) They shall come into force at once.

2. **Definitions.**—In these rules, unless the context otherwise requires,—

- (a) "Commission" means the Union Public Service Commission;
- (b) "direct appointment" means appointment on the recommendation of the Union Public Service Commission either by selection or as a result of competitive examination;
- (c) "Government" means the Central Government;
- (d) "Pool" means the Central Cost Accounts Pool Constituted under rule 3;
- (e) "Schedule" means a Schedule to these rules;
- (f) "Tariff Commission" means the Tariff Commission established under the Tariff Commission Act, 1951 (50 of 1951).

3. **Constitution of the pool.**—The pool shall consist of all posts, whether permanent or temporary, of the grades and categories mentioned in Schedule I existing in the Ministry of Finance and the Tariff Commission at the commencement of these rules or which may be sanctioned by the Government hereafter.

4. **Recruitment to the pool.**—All vacancies in the pool shall be filled by promotion or direct appointment in accordance with the provisions contained in Schedule II.

5. **Qualifications.**—The educational qualifications, age limits, experience and other matters relating to appointment to the pool shall be as laid down in Schedule III.

**6. Probation.**—(1) Every person recruited to the pool, after the commencement of these rules, under rule 4 shall be appointed on probation for a period of two years.

(2) The Central Government may, in the case of any person, extend or reduce the period of probation.

(3) A probationer shall be liable to be discharged at the time without assigning any reasons.

## SCHEDULE II

(See rule 4)

**1. Method of recruitment to the Pool.**—Recruitment shall be made in the manner and according to the percentage indicated below:—

- |                                     |  |
|-------------------------------------|--|
| (1) Chief Cost Accounts Officer     | By direct appointment.   |
| (2) Senior Cost Accounts Officer    | By promotion from Cost Accounts Officers.  |
| (3) Cost Accounts Officer           | 50 per cent by direct appointment and 50 per cent by promotion from Assistant Cost Accounts Officer. |
| (4) Assistant Cost Accounts Officer | 50 per cent by direct appointment and 50 per cent by promotion from Cost Accountants.                |
| (5) Cost Accountant                 | By direct appointment.   |

2. Where suitable candidates with requisite qualifications are not available for appointment either by promotion or by direct appointment or where the appointment for work of special nature is to be made, the Government may, in consultation with the Union Public Service Commission, change the percentage specified above.

**3. Eligibility.**—A candidate for direct appointment to any post in the pool must be:—

- (i) a citizen of India; or
- (ii) a subject of Sikkim; or
- (iii) a person of Indian origin who has migrated from Pakistan with the intention of permanently settling in India; or
- (iv) a subject of Nepal or Portugues or former French Possession in India.

**NOTE 1.**—The appointment of candidates in categories (iii) and (iv) will be subject to the issue of Certificates of eligibility in their favour by the Government of India. The certificate of eligibility in respect of a candidate belonging to category (iii) will be valid only for a period of one year from the date of his appointment, beyond which he would be retained in service only if he has become a citizen of India.

**NOTE 2.**—A candidate in whose case a certificate of eligibility is necessary may be admitted to an examination or interview conducted by the Union Public Service Commission or any other recruiting authority and he may also provisionally be appointed subject to the necessary certificate given to him by the Government.

**4. Disqualifications.**—No person who has more than one wife living or who having a spouse living marries in any case in which such marriage is void by reason of its taking place during the life-time of such spouse, shall be eligible for appointment to the pool:

Provided that the Government may, if satisfied that there are special grounds for doing so, exempt any person from the operation of this sub-rule.

5. No woman whose marriage is void by reason of the husband having a wife living at the time of such marriage, or who has married a person who has a wife living at the time as such marriage, shall be eligible for appointment to the pool.

Provided that the Government may, if satisfied that there are special grounds for doing so, exempt any such woman from the operation of this rule.

**6. Reservation to specific sections of the people.**—All appointments to the pool made by direct recruitment shall be subject to any orders which may from time to time be issued by the Government of India in the Ministry of Home Affairs providing for reservation of appointments or posts in favour of scheduled castes and scheduled tribes.

7. Nothing in these rules shall prevent a person holding any post in the pool to apply for a higher post which is to be filled by direct appointment, if he is in possession of the qualifications requisite for the post:

Provided that, if a persons holding any post in the pool is appointed to a higher post in relaxation of the minimum educational qualifications prescribed therefore, he shall not be eligible to promotion to Class I service unless he acquires that qualification.

8. Recruitment by promotion shall be made by selection on the basis of merit.

### SCHEDULE III

(See rule 5)

#### a. Qualifications for appointment by direct recruitment:—

##### (1) Chief Cost Accounts Officer:—

*Essential* . . . . . (i) Accountancy qualification recognised for enrolment in Register of Members maintained by the Council of the Institute of Chartered Accountants of India, or the Final Examination of the Institute of Cost and Works Accountants, London, or the Indian Institute of Cost and Works Accountants, Calcutta.

(ii) About ten years' practical experience in Cost Accounting in a Government organisation or in a reputed Industrial Organisation, of which at least eight years should have been spent either in a position of responsibility or in a professional capacity.

*Desirable.* . . . . Degree of a recognised University.

##### (2) Cost Accounts Officer:

*Essential.* . . . . (i) Accountancy qualification recognised for enrolment in Register of Members maintained by the Council of the Institute of Chartered Accountants of India, or the Final Examination of the Institute of cost and Works Accountants, London, or the Indian Institute of Cost and Works Accountants, Calcutta.

(ii) About seven years' practical experience in Cost Accounting in a Government or Industrial Organisation, of which about five years should have been spent either in a position of responsibility within the organisation or in a professional capacity.

*Desirable :* . . . . Degree of a recognised University.

##### (3) Assistant Cost Accounts Officer:

*Essential.* . . . . (i) Accountancy qualification recognised for enrolment in Register of Members maintained by the Council of the Institute of Chartered Accountants of India, or the Final Examination of the Institute of Cost and Works Accountants, London, or the Indian Institute of Cost and Works Accountants, Calcutta.

(ii) About five years' practical experience in Cost Accounting in a Government or Industrial Organisation of which about three years should have been spent either in a position of responsibility within the organisation or in a professional capacity.

*Desirable.* . . . . Degree of a recognised University.

##### (4) Cost Accountants :

*Essential.* . . . . (i) Accountancy qualification recognised for enrolment in Register of Members maintained by the Council of the Institute of Chartered Accountants of India, or the Final Examination of the Institute of Cost and Works Accountants, London, or the Indian Institute of Cost and Works Accountants, Calcutta.

(ii) About three year's practical experience in Cost Accounting work.

*Desirable.* . . . . Degree of a recognised University.

**2. Qualifications for appointment by promotion:—**

(1) *Senior Cost Accounts Officer*

(a) Five Years' service as Cost Accounts Officer.

Or

(b) a minimum of two years as Cost Accounts Officer and a total service of eight years in the grades of Assistant Cost Accounts Officer and Cost Accounts Officer.

Or

(c) a minimum of two years as Cost Accounts Officer and a total of fifteen years' service as Cost Accountant, Assistant Cost Accounts Officer and Cost Accounts Officer.

(2) *Cost Accounts Officer*

Three years' service as Assistant Cost Accounts Officer.

(3) *Assistant Cost Accounts Officer*

Four years' service as Cost Accountant.

**3. Age.—**The maximum age limit for direct appointment to the various posts in the pool shall be as follows:—

Chief Cost Accounts Officer . . . . .	45 years.
Cost Accounts Officer . . . . .	40 years.
Assistant Cost Accounts Officer . . . . .	40 years.
Cost Accountant . . . . .	30 years.

The above-mentioned upper age limit shall be relaxable in the case of Scheduled Castes/Tribes, displaced persons and other specified categories in accordance with the general orders issued from time to time by the Government of India, and also in the case of permanent Central/State Government servants.

[No. 3G(13)-E.I(A)/58.]

K. P. SIRCAR, Dy. Secy.

**(Department of Economic Affairs)**

*New Delhi, the 8th August 1961*

**S.O. 1936.**—In exercise of the powers conferred by sub-section (2) of section 45 of the Banking Companies Act, 1949 and in continuation of the notification of the Government of India in the Ministry of Finance (Department of Economic Affairs) published in the Gazette of India, dated the 25th May, 1961 as S.O. No. 1210, the Central Government hereby directs that the Catholic Bank Ltd., Mangalore may, during the period of moratorium granted to it, make the following further payments, namely, any sums not exceeding 10 per cent of the total balance in every savings bank or current account or in any other deposit by whatever name called, provided that the sum total of the amounts paid in respect of the accounts standing in the name of any one person (and not jointly with that of any other person) does not exceed Rs. 150, and provided further that no amount shall be paid to any depositor who is indebted to the bank in any way.

[No. F. 4(87)-BC/61(II).]

*New Delhi, the 9th August 1961*

**S.O. 1937.**—In exercise of the powers conferred by section 53 of the Banking Companies Act, 1949 (10 of 1949), the Central Government, on the recommendation of the Reserve Bank of India, hereby declares that the provisions of sub-section (2) of section 19 of the said Act shall not apply to the State Bank of Indore till the 15th April 1962, in respect of the shares of the Binod Mills Co. Ltd., Hukamchand Mills Ltd., Indore Malwa United Mills Ltd. and India United Mills Ltd. held by it on the 15th April, 1961.

[No. F. 4(74)-BC/61.]

R. K. SESHADRI, Dy. Secy.

**(Department of Economic Affairs)**

*New Delhi, the 9th August 1961*

**S.O. 1938.**—In exercise of the powers conferred by section 53 of the Banking Companies Act, 1949 (10 of 1949), the Central Government, on the recommendation of the Reserve Bank of India, hereby declares that the provisions of section 9 of the said Act shall not apply to the Sahukara Bank Ltd., Ludhiana in respect of the properties held by it at Banga, Jullundur District, Punjab, till the 15th March 1963.

[No. F. 4(91)-BO/61.]

**S.O. 1939.**—In exercise of the powers conferred by section 53 of the Banking Companies Act, 1949 (10 of 1949), the Central Government, on the recommendation of the Reserve Bank of India, hereby declares that the provisions of section 9 of the said Act shall not apply to the Coimbatore Varthaka Vridhi Bank Ltd., Coimbatore in respect of the properties held by it at Vellanaipatti, Coimbatore District, Madras and Rajapuram, Tiruchirapalli District, Madras, till the 15th March 1962.

[No. F. 4(91)-BC/61.]

**S.O. 1940.**—In exercise of the powers conferred by section 53 of the Banking Companies Act, 1949 (10 of 1949), the Central Government, on the recommendation of the Reserve Bank of India, hereby declares that the provisions of section 9 of the said Act shall not apply to the Himalya Bank Ltd., Kangra in respect of the properties held by it at Nagrota Bagwan and Dharmasala, till the 30th June 1962.

[No. F. 4(91)-BC/61.]

**S.O. 1941.**—In exercise of the powers conferred by section 53 of the Banking Companies Act, 1949 (10 of 1949), the Central Government, on the recommendation of the Reserve Bank of India, hereby declares that the provisions of section 9 of the said Act shall not apply to the Bari Doab Bank Ltd., Hoshiarpur in respect of the properties held by it at Premgarh, Khwaspur and Bajwara, Hoshiarpur District, Punjab and at Kotwal, Ferozepur District, Punjab till the 15th March 1962.

[No. F. 4(91)-BC/61.]

*New Delhi, the 11th August 1961*

**S.O. 1942.**—In exercise of the powers conferred by sub-section (2) of section 45 of the Banking Companies Act, 1949, the Central Government hereby extends the period of moratorium granted by it in respect of the Rayalaseema Bank Ltd., Anantapur, under the aforesaid sub-section upto and including the 31st August, 1961.

[No. F. 4(77)-BC/61.]

D. N. GHOSH, Dy. Secy.

## (Department of Economic Affairs)

New Delhi, the 11th August, 1961

S.O. 1943.—Statement of the Affairs of the Reserve Bank of India as on the 28th July, 1961.

## BANKING DEPARTMENT

Liabilities	Rs.	Assets	Rs.
Capital paid up . . . . .	5,00,00,000	Notes . . . . .	31,15,35,000
Reserve Fund . . . . .	80,00,00,000	Rupee Coin . . . . .	1,53,000
National Agricultural Credit (Long-term Operations) Fund . . . . .	50,00,00,000	Subsidiary Coin . . . . .	2,73,000
National Agricultural Credit (Stabilisation) Fund . . . . .	6,00,00,000	Bills Purchased and Discounted :—	
		(a) Internal† . . . . .	..
		(b) External . . . . .	..
		(c) Government Treasury Bills . . . . .	13,18,08,000
Deposits :—			
(a) Government		Balances held abroad* . . . . .	5,02,56,000
(1) Central Government . . . . .	77,08,91,000	Loans and Advances to Governments** . . . . .	40,87,14,000
(2) Other Governments . . . . .	20,55,93,000	Other Loans and Advances† . . . . .	114,80,19,000
(b) Banks . . . . .	81,71,08,000	Investments . . . . .	241,11,41,000
(c) Others . . . . .	111,60,51,000	Other Assets . . . . .	18,14,20,000
Bills Payable . . . . .	20,71,21,000		
Other Liabilities . . . . .	11,65,53,000		
RUPES . . . . .	464,33,19,000	RUPES . . . . .	464,33,19,000

\*Includes Cash &amp; Short term Securities.

\*\*Includes Temporary Overdraft to State Governments.

†The item 'Other Loans and Advances' includes Rs. 91,50,000/- advanced to scheduled banks against usance bills under Section 17 (4) (c) of the Reserve Bank of India Act.

Dated the 2nd day of August, 1961,

An Account pursuant to the Reserve Bank of India Act, 1934, for the week ended the 28th day of July, 1961.

ISSUE DEPARTMENT

Liabilities	Rs.	Rs.	Assets	Rs.	Rs.
Notes held in the Banking Department . . . .	31,15,35,000		A. Gold Coin and Bullion —		
Notes in circulation . . . .	1890,76,19,000		(a) Held in India . . . .	117,76,03,000	
Total Notes issued . . . .		1921,91,54,000	(b) Held outside India . . . .	..	
			Foreign Securities . . . .	93,00,89,000	
			TOTAL OF A . . . .		210,76,92,000
			B. Rupee Coin . . . .		123,92,75,000
			Government of India Rupee Securities . . . .		1587,21,87,000
			Internal Bills of Exchange and other commercial paper . . . .		..
TOTAL LIABILITIES . . . .		1921,91,54,000	TOTAL ASSETS . . . .		1921,91,54,000

Dated the 2nd day of August, 1961,

H. V. R. IENGAR,  
Governor.

[No. F. 3(2)-BC/61.]

A. BAKSI, Jt. Secy.

## (Department of Revenue)

## INCOME-TAX

New Delhi, the 11th August 1961

**S.O. 1944.**—The Indian Council of Medical Research, New Delhi, the “prescribed authority” having approved the Calcutta Medical Research Institute, Calcutta, for the purposes of clause (xii) of sub-section (2) of Section 10 of the Indian Income-tax Act, 1922 (11 of 1922), the Central Government hereby makes the following further amendment in the list appended to the notification of the Government of India in the Late Finance Department (Revenue Division) No. 34—Income-tax, dated the 23rd November, 1946, namely:

In the said list under the heading Institutions, after item No. 36 the following item shall be inserted, namely:—

“37. The Calcutta Medical Research Institute, Calcutta”.

[No. 55/F. No. 10/57/61-IT(AI).]

D. SUBRAMANIAN, Dy. Secy.

## CENTRAL EXCISE COLLECTORATE

Hyderabad (Dn.), the 9th August 1961

**S.O. 1945.**—In exercise of the powers conferred on me under Rule 50 of the Central Excise Rules, 1944, I hereby direct that all manufacturers of Patent or Proprietary medicines licensed in Form L.4 shall *not* remove from the approved premises any non-excisable medicines *except* under cover of a Gate pass (on coloured paper) in the enclosed form.

2. The Gate pass should be made out by the manufacturer or his authorised agent in duplicate and presented to the Central Excise Officer in-charge of the Factory atleast 12 hours before the intended removal of the goods. The Central Excise Officer will, after due verification of the goods, countersign both copies of the pass and permit the removal of goods under the original copy, retaining the duplicate with him for his record.

3. Where the removal of non-excisable medicines from Factories not having a regular and separate Central Excise Officer is urgently required and cannot await the visit of the Central Excise Officer, the goods may be removed under the signature of the manufacturer or his authorised agent on the Gate passes. In all such cases, the duplicate copy of the passes shall be presented to the Central Excise Officer during his next visit for verification with the relevant documents/records.

## FORM

## GATE PASS FOR NON-EXCISABLE MEDICINES

Serial No.

Date

To

The Central Excise Officer,  
Factory.

Please authorise under Rule 50 of the Central Excise Rules, 1944 removal of the following non-excisable goods:

- (1) Description of goods;
- (2) No. & Description of packages/containers;
- (3) Marks & Nos. on Packages/containers;
- (4) Contents of packages/containers in weight/volume/Numbers;
- (5) Name and address of the consignee;
- (6) Date and time of removal;

Signature of the  
Manufacturer/Authorised Agent  
Address:

Permitted

Signature of the Central Excise Officer,  
in-charge of the factory.

N.B.: Strike out the inapplicable words.

[No. 8/61.]

B. SEN, Collector.



## MINISTRY OF COMMERCE &amp; INDUSTRY

## ORDER

New Delhi, the 10th August 1961

**S.O. 1946/IDRA/6/7.**—In exercise of the powers conferred by section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951) read with Rules 4 and 5 of the Development Councils (Procedural) Rules, 1952, the Central Government hereby appoints the following persons to be members of the Development Council for the scheduled industries engaged in the manufacture or production of Drugs and Pharmaceuticals, for a period of two years with effect from the date of this Order, on the expiry of the tenure of office of members appointed under the Government of India, Ministry of Commerce and Industry Order No. S.O. 1607, dated the 7th July, 1959 as amended from time to time:—

Sl. No.	Name and address of Member	Interest represented
1	Dr. H.R. Nanji, Meher House, 15, Cawasji Patel Street, Bombay-1. (CHAIRMAN)	Technical Knowledge.
2	Shri Ramanbhai Amin. M/s Alambic Chemical Works Ltd., Baroda-3.	Owners
3	Shri S.T. Raja, Managing Director, Hindustan Antibiotics (Private) Ltd., Pimpri (Poona).	Do
4	Dr. R. Mazumdar, Works Manager, M/s May & Baker Ltd., Worli, Bombay-18.	Do.
5	Shri. K.A.N. Rao, Executive Director, M/s Sarabhai Chemicals Ltd., Ahmedabad.	Do.
6	Shri Dhiren Dey, Director, Deys' Medical Stores (Mfg.) Ltd., Calcutta.	Do.
7	Dr. G.B. Ramasarma, Director-in-charge, Research & Control Division, Raptokas, Brett & Co. Private Ltd., Pharmaceutical Works, Dr. Annie Besant Road, Worli, Bombay.	Do.
8	Shri K.R. Chandran, M/s Bliss & Cotton Ltd., 12E, Connaught Place, New Delhi-1.	Technical Knowledge
9	Dr. U. P. Basu, Director, Bengal Immunity Research Institute, 39, Lower Circular Road, Calcutta-16.	Do.
10	Dr. B. Mukerji, Director, Central Drug Research Institute, Lucknow.	Do.
11	Dr. K.P. Karanth, C/o Biological & Synthetic Products Ltd., Sanatnagar, Hyderabad.	Do.
12	Dr. B. Shah, Development Officer (Drugs). Development Wing, New Delhi.	Do.
13	Shri J. N. Banerjee, Director, Sandoz Products (P) Ltd., Bombay.	Do.
14	Shri P. M. Nabar, Officer-in-charge, Central Indian Medicinal Plants Organization, Council of Scientific & Industrial Research, Old Mill Road, New Delhi.	Consumers

S. No.	Name and address of Member	Interest Represented
15	Shri S.K. Borkar, Drugs Controller, Directorate General Health Services, Ministry of Health, New Delhi.	Consumers.

[No. I(14)IA(IV)/60]

D. HEJMADI, Dy. Secy.

**TARIFF COMMISSION.***New Delhi, the 11th August 1961*

**S.O. 1947.**—In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules to amend the Tariff Commission (Class III Posts) Recruitment Rules, 1959, published with the notification of the Government of India in the Ministry of Commerce and Industry, S.O. No. 2325 dated the 24th October, 1959, namely:—

1. These rules may be called the Indian Tariff Commission (Class III Posts) Recruitment (Amendment) Rules, 1961.
2. In rule 4 of the Tariff Commission (Class III Posts) Recruitment Rules, 1959, (hereinafter referred to as the said rules), for the existing proviso the following proviso shall be substituted, namely:—

“Provided that the maximum age limit specified in column 6 of the Schedule in respect of direct recruits may be relaxed in the case of candidates belonging to Scheduled Castes/Scheduled Tribes and other special categories in accordance with the orders issued by the Central Government from time to time”.

3. After rule 4 of the said rules, the following rule shall be added, namely:—

“5. Disqualification.—(1) no male candidate, who has more than one wife living or who having a spouse living, marries in any case in which such marriage is void by reason of its taking place during the life time of such a spouse shall be eligible for appointment to the post.

- (2) No female candidate, whose marriage is void by reason of the husband having a wife living at the time of such marriage or who has married a person who has a wife living at the time of such marriage shall be eligible for appointment to the post.

Provided that the Central Government may if satisfied that there are special grounds for so ordering, exempt any person from the operation of this rule”.

4. In the Schedule to the said rules, for item 6 and the entries relating thereto, the following item and entries shall be substituted, namely:—

1	2	3
'6. Upper Division Clerks including Cashier.	12	General Central Service Class III (Non-Gazetted) Ministerial.
4		
Rs. 80—5—120—EB—8—200—10/2—220 (S.P. of Rs. 25/- for the post of Cashier).		"Non-Selection Post"
Revised as :— Rs. 130—5—160—8—200—EB—8—256 —EB—8—280—10—300 (S.P. of Rs. 25/- for the post of Cashier)		
6	7	8
Not applicable	Matriculation or its equivalent.	Not applicable.
9	10	
Two years	75% by promotion and 25% on the basis of competitive examination limited to Lower Division Clerks	
11	12	
Lower Division Clerks on the basis of seniority (with a minimum period of service of three years) subject to the rejection of the unfit.	Consultation with the U.P.S.C. not necessary.	

[No. 28-TG(21)/60.]

R. KALYANASUNDARAM, Under Secy.

(Indian Standards Institution)

New Delhi, the 7th August 1961

**S O. 1948.**—In pursuance of sub-regulation (1) of regulation 8 of the Indian Standard Institution (Certification Marks) Regulations, 1955, the Indian Standards Institution hereby notifies that ten licences, particulars of which are given in the Schedule hereto annexed, have been granted authorizing the licensees to use the Standard Mark.

## THE SCHEDULE

Sl. No.	Licence No. and Date	Period of Validity		Name and Address of the Licensee	Article/Process covered by the Licence	Relevant Indian Standard
		From	To			
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	CM/L-320 18-7-1961	1-9-61	31-8-62	M/s R.S. Brothers, Bakshiji ka Chowk Jaipur	Bicycle Frames	IS: 623-1955 Spec- ification for Bicycle Frames ( <i>Tenta- tive</i> )
2	CM/L-321 18-7-1961	1-9-61	31-8-62	M/s Jaipur Cycle and Parts Indus- tries, Shriji Ki Mori, Jaipur	Bicycle Frames	IS: 623-1955 Spec- ification for Bicycle Frames ( <i>Tenta- tive</i> )
3	CM/L-322 18-7-1961	1-9-61	31-8-62	M/s Rajasthan Cycle Industries (Regd.), Tripolia Bazar (Atish), Jaipur	Bicycle Frames	IS: 623-1955 Spec- ification for Bicycle Frames ( <i>Tenta- tive</i> )
4	CM/L-323 18-7-1961	1-8-61	31-7-62	The Metal Box Company of India Ltd., Elaiya Mudali St., Ton- diyarpet, Madras- 21	18-Litre Square Tins	IS: 916-1958 Spec- ification for 18- Litre Square Tins
5	CM/L-324 26-7-1961	1-8-61	31-7-62	The Sports Goods Training-cum- Production Centre, 45 B. T. Road, Baranagar, Cal- cutta 50	Footballs, Volley- balls, Basket- balls and Water polo balls	IS: 417-1953 Spec- ification for Foot- balls, Volley- balls, Basket-balls and Water polo balls ( <i>Tentative</i> )
6	CM/L-325 26-7-1961	1-8-61	31-7-62	M/s Devidayal (Sales) Private Ltd., Gupta Mills Estate, Reay Road, Bombay-10	BHC Emulsi- fiable Concen- trates	IS: 632-1958 Spec- ification for BHC Emulsifiable Con- centrates ( <i>Revised</i> )
7	CM/L-326 26-7-1961	1-8-61	31-7-62	M/s Tata-Fison Limited, 20 Howrah Road, Salkia, Howrah (West Bengal)	BHC Emulsifi- able Concen- trates	IS: 632-1958 Spec- ification for BHC Emulsifiable Con- centrates ( <i>Revised</i> )
8	CM/L-327 31-7-1961	1-8-61	31-7-62	M/s India Plywood Company, 33 S. K. Dev Road, Pathipookar (Dum Dum), Calcutta- 28	Tea-Chest Ply- wood Panels	IS: 10-1953 Spec- ification for Plywood Tea-Chests ( <i>Re- vised</i> )
9	CM/L-328 31-7-1961	15-8-61	14-8-62	The Metal Con- tainers Private Ltd., Industrial Estate, Naini, Allahabad	18-Litre Square Tins	IS: 916-1958 Spec- ification for 18- Litre Square Tins.
10	CM/L-329 21-7-1961	15-8-61	14-8-62	M/s Delta Spokes Manufacturing Co. 12 Nanabhai Lane, Bombay-1	14 SWG Bicycle Spokes (Plain), with Nipples and Washers	IS: 630-1955 Spec- ification for Bicycle Spokes (Plain) and Nipples for Spokes ( <i>Tentative</i> )

**S.O. 1949.**—In pursuance of sub-regulation (1) of regulation 8 of the Indian Standards Institution (Certification Marks) Regulations, 1955, the Indian Standards Institution hereby notifies that eleven licences, particulars of which are given in the Schedule hereto annexed, have been renewed.

## THE SCHEDULE

Sl. No.	Licence No. and Date	Period of Validity		Name and Address of the Licensee	Article covered by the Licence	Relevant Indian Standard
		From	To			
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	CM/L-29 1-7-1957	16-7-61	15-7-62	M/s. Tata-Fison Ltd., Bombay House, Bruce Street, Bombay-1	(1) DDT Dusting Powders (2) DDT Water Dispersible Powder Concentrates	IS: 564-1955 Specification for DDT Dusting Powders IS: 565-1955 Specification for DDT Water Dispersible Powder Concentrates
2	CM/L-30 11-7-1957	16-7-61	15-7-64	The India Cements Ltd., Sankarnagar, Talaiyuthu District Tirunelveli	Ordinary and Rapid-Hardening Portland Cement	IS: 269-1958 Specification for Ordinary Rapid-Hardening and Low Heat Portland Cement
3	CM/L-133 15-7-1959	1-8-61	31-7-62	The Travancore Sugars & Chemicals Ltd., Tiruvalla, Central Travancore, Kerala State	Rectified Spirit—Grade I	IS: 323-1959 Specification for Rectified Spirit (Revised)
4	CM/L-134 15-7-1959	1-8-61	31-7-62	M/s Motor Industries Co. Ltd., No. 22, Banerghatta Rd., Adugodi, Bangalore-1	14 mm Sparking Plugs	IS: 1063-1957 Specification for 14 mm Sparking Plugs
5	CM/L-135 15-7-1959	1-8-61	31-7-62	M/s Sharda Plywood Industries (P) Limited, Jeypore Road, P.O. Jeypore, Assam	Plywood Tea-Chest Panels	IS: 10-1953 Specification for Plywood Tea-Chest (Revised)
6	CM/L-136 3-8-1959	17-8-61	16-8-62	M/s Liberty Chemical Works, Nagardas Road, Mogra West, Andheri (East), Bombay	Sodium Thiosulphate, Photographic Grade	IS: 246-1957 Specification for Sodium Thiosulphate (Revised)
7	CM/L-204 28-6-1960	15-7-61	14-7-62	The Jaipur Metals & Electricals Ltd., Near Railway Station, Jaipur (Rajasthan)	Copper Rods for Boiler Stay Bolts and Rivets	IS: 288-1960 Specification for Copper Rods for Boiler Stay Bolts and Rivets (Revised)
8	CM/L-205 20-7-1960	1-8-61	31-7-62	M/s Kaira District Co-operative Milk Producers' Union Ltd., Anand (W. R.) Kaira District, Gujarat State	Milk Powder (Whole and Skim)	IS: 1165-1957 Specification for Milk Powder (Whole and Skim)


(1)	(2)	(3)	(4)	(5)	(6)	(7)
9	CM/L-206 20-7-1960	20-7-61	19-7-62	M/s Imperial Chemical Industries (India) Pvt. Ltd., 'H' Shed Factory, Grain Depot, Sewri, Bombay	BHC Dusting Powders	IS: 561-1958 Specification for BHC Dusting Powders (Revised)
10	CM/L-207 20-7-1960	1-8-61	31-7-62	The Renown Biscuit Co., Connaught Road, Near Victoria Gardens, Bombay-27	Biscuits (Excluding Wafer Biscuits) of the following varieties: Golf, Royal Assorted, Flower, Custard Cream, Shrewsbury, Glucose, Digestive, Nice, Petit Beurre, Marie, Thin Arrowroot, Saltine Khara, Saltine (Square), Cream Cracker, Cheese Flake, Zoological, gem, R.B.C., Chand Tara and Baby arrowroot.	IS: 1011-1957 Specification for Biscuits (Excluding Wafer Biscuits)
11	CM/L-208 29-7-1960	15-8-61	14-8-62	M/s Bengal Chemical & Pharmaceutical Works Ltd., 6, Ganesh Chunder Avenue, Calcutta	Naphthalene	IS: 539-1955 Specification for Naphthalene


[No. MD/12:377]

**S.O. 1950.**—In pursuance of sub-rule (1) of rule 4 of the Indian Standards Institution (Certification Marks) Rules, 1955, the Indian Standards Institution hereby notifies that the Standard Marks, designs of which together with the verbal description of the designs and the title of the relevant Indian Standards are given in the Schedule hereto annexed, have been specified.

These Standard Marks, for the purpose of the Indian Standards Institution (Certification Marks) Act, 1952 and the rules and regulations framed thereunder, shall come into force with effect from 15th August 1961.

## THE SCHEDULE

Sl. No.	Design of the Standard Mark	Product/Class of Product to which applicable	No. & Title of Relevant Indian Standard	Verbal description of the design of the Standard Mark
(1)	(2)	(3)	(4)	(5)
1	IS: 1135 	Spring Leaf for Automobile Suspension.	IS : 1135-1957 Specification for General Requirements for Leaf Springs for Automobile Suspension.	The monogram of the Indian Standards Institution, consisting of letters ISI, drawn in the exact style and relative proportions as indicated in column (2) the number designation of the standard being superscribed on

(1)	(2)	(3)	(4)	(5)
				the top side of the monogram and the word 'LEAF' being subscribed under the bottom side of the monogram as indicated in the design.
2	IS:1135 	Leaf Spring for Automobile Suspension	IS : 1135-1957 Specification for General Requirements for Leaf Springs for Automobile Suspension.	The monogram of the Indian Standards Institution, consisting of letters ISI, drawn in the exact style and relative proportions as indicated in column (2) the number designation of the Standard being superscribed on the top side of the monogram as indicated in the design.

[No. MD/17:2.]

**S.O. 1951.**—In pursuance of sub-regulation (3) of regulation 7 of the Indian Standards Institution (Certification Marks) Regulations, 1955, the Indian Standards Institution hereby notifies that the marking fee per unit for Leaf and Leaf Springs for Automobile Suspension details of which are given in the Schedule hereto annexed, has been determined and the fee shall come into force with effect from 15th August 1961.

## THE SCHEDULE

Sl. No. (1)	Product/Class of Products (2)	No. and title of relevant Indian Standard (3)	Unit (4)	Marking Fee per Unit (5)
1	Leaf and Leaf Spring for Automobile Suspension	IS : 1135-1957 Specification for General Requirements for Leaf Springs for Automobile Suspension.	One Metric Tonne	Rs. 2.00

[No. MD/18:2]

New Delhi, the 10th August 1961

**S.O. 1952.**—In pursuance of sub-regulation (3) of regulation 7 of the Indian Standards Institution (Certification Marks) Regulations, 1955, the Indian Standards Institution hereby notifies that the marking fee per unit for Round Paint Tins and Round Vanaspati Tins details of which are given in the Schedule hereto annexed, has been determined and the fee shall come into force with effect from 15th August 1961.

## THE SCHEDULE



Sl. No.	Product/Class of Products	No. and title of relevant Indian Standard	Unit	Marking Fee per Unit
1.	Round Paint Tins	IS:1407-1959 Specification for Round Paint Tins	One Tin	1/4 nP. per unit for the first 5,00,000 units with a minimum of Rs. 1250.00 for production during a calendar year, 1/6 nP. per unit for the next 5,00,000 units, 1/10 nP. per unit for 10,00,001st unit and above.
2.	Round Vanaspati Tins	IS:1413-1959 Specification for Round Vanaspati Tins	—do—	—do—

[No. MD/18:2.]

**S.O. 1953.**—In pursuance of sub-rule (1) of rule 4 of the Indian Standards Institution (Certification Marks) Rules, 1955, the Indian Standards Institution hereby notifies that the Standard Marks, designs of which together with the verbal descriptions of the designs and the titles of the relevant Indian Standards, are given in the Schedule hereto annexed, have been specified.

These Standard Marks for the purpose of the Indian Standards Institution (Certification Marks) Act, 1952 and the rules and regulations framed thereunder, shall come into force with effect from 15th August 1961.

#### THE SCHEDULE.

Sl. No.	Design of the Standard Mark	Product/Class of Product to which applicable	No. & Title of Relevant Indian Standard	Verbal description of the design of the Standard Mark
(1)	(2)	(3)	(4)	(5)
1.		Round Paint Tins	IS:1407-1959 Specification for Round Paint Tins	The monogram of the Indian Standards Institution, consisting of letters ISI, drawn in the exact style and relative proportions as indicated in column (2), the number designation of the Standard being supercribed on the top side of the monogram and the words "TIN ONLY" being subscribed under the bottom side of the monogram as indicated in the design.
2.		Round Vanaspati Tins	IS:1413-1959 Specification for Round Vanaspati Tins	—do —

[No. MD/17:2.]

LAL C. VERMAN,  
Director.

#### MINISTRY OF STEEL, MINES & FUEL

(Department of Mines & Fuel)

New Delhi, the 11th August 1961

**S.O. 1954.**—Whereas it appears to the Central Government that coal is likely to be obtained from the lands mentioned in the Schedule hereto annexed:

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), the Central Government hereby gives notice of its intention to prospect for coal therein.



## CENTRAL JHARIA BLOCK

## SCHEDULE

Sl. No.	Village	Thana	Thana No.	District	Area	Remarks
1.	Dungri	Jharia	111	Dhanbad	..	Part
2.	Petia	Jharia	107	Dhanbad	..	Part
3.	Phutaha	Jharia	99	Dhanbad	..	Part
4.	Chakphupaha	Jharia	98	Dhanbad	..	Part
5.	Dhobni	Jharia	96	Dhanbad	..	Whole
6.	Dhandabar	Jharia	82	Dhanbad	..	Part
7.	Chirudih	Jharia	83	Dhanbad	..	Part
8.	Panderkanali	Jharia	80	Dhanbad	..	Part
9.	Parasia	Jharia	84	Dhanbad	..	Whole
10.	Garbhudih	Jharia	86	Dhanbad	..	Part
11.	Manidi	Jharia	85	Dhanbad	..	Part
12.	Samsikhra	Jharia	95	Dhanbad	..	Part
13.	Gopinathdih	Jharia	97	Dhanbad	..	Part
14.	Sabaldih	Jharia	103	Dhanbad	..	Part
15.	Rajasbera	Jharia	102	Dhanbad	..	Part
16.	Jarma	Jharia	106	Dhanbad	..	Part
17.	Aralgoria	Jharia	77	Dhanbad	..	Part

Total Area

4.60 Sq. Miles.  
(Approximately)*Boundary description:*

AB line passes through the Western boundary of villages Garbhudih, Parasia, Chirudih, and Panderkanali and the Central line of Bansihore.

BC line passes through village Panderkanali.

CD line passes through villages Chirudih and Dhandabar.

DEF line passes through the Northern boundary of village Dhandabar.

FG line passes through village Aralgoria.

GH line passes through village Aralgoria.

HI line passes through village Aralgoria.

IJ line passes through the common boundary of Dhandabar, Aralgoria, Dhobni and again Aralgoria.

JK line passes through the common boundary of Dhobni and Aralgoria villages.

KL line passes through village Aralgoria.

LMN line passes through village Phutaha.

NO line passes through villages Phutaha and Rajasbera.

OPQ line passes through village Rajasbera.

QR line passes through the common boundary of Rajasbera, Kenduadih, Jarma and again Kenduadih.

RS line passes through the Northern boundary of Petia village upto point 'S'.

ST line passes through villages Petia and Dungri (along the fault line falling in villages Petia and Dungri).

TU line passes through villages Dungri upto the middle of Damodar River.

UV line passes through the middle of Damodar River.

VW line passes through the middle of Damodar River to the common boundary of Jarma and Petia villages.

WA line passes through the common boundary of villages Jarma and Petia through villages Jarma, Rajasbera, Sabaldih, Gopinathdih, Samsikhra, Mandih and Garbhudih upto the Central line of Bansihore at the Western meeting point of Garbhudih and Parasia villages boundary.

The plan of the area covered by this notification can be inspected at the office of the National Coal Development Corporation Ltd. (Revenue Section), Darbhanga House, Ranchi or at office of the Deputy Commissioner, Dhanbad (Bihar).

[No. C2-20(7)/60-C3.]

S. KOTEESWARAN, Under Secy.

**(Department of Mines & Fuel)**

*New Delhi, the 11th August 1961*

**S.O. 1955.**—In exercise of the powers conferred by sub-section (2) of section 4 of the Coal Mines (Conservation and Safety) Act, 1952 (12 of 1952), the Central Government hereby appoints Shri D. N. Prasad, Director, Indian School of Mines and Applied Geology, Dhanbad, as a member of the Coal Board, with immediate effect.

2. In paragraph 2 of the notification of the Government of India, Ministry of Steel, Mines and Fuel (Department of Mines and Fuel) S.O. No. 1121 dated the 10th May, 1961, the following shall be added at the end:—

“6. Shri D. N. Prasad, Director, Indian School of Mines and Applied Geology, Dhanbad—Member”.

[No. C5-5(1)/61.]

**ORDER**

*New Delhi, the 9th August 1961*

**S.O. 1956.**—In exercise of the powers conferred by section 5 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby makes the following further amendment in the Order of the Government of India in the Late Ministry of Production, S.R.O. No. 1185, dated the 2nd April, 1957, namely:—

In the Schedule annexed to the said Order, against serial number 4, in column 2, (a) after entry (ii), the following entry shall be inserted, namely:—

“(iii) Joint Director of Industries (Procurement)”

(b) the existing entries (iii), (iv), (v), (vi) and (vii) shall be re-numbered as entries (iv), (v), (vi), (vii) and (viii) respectively.

[No. 11/7/61-CL.]

A. S. GREWAL, Dy. Secy.

**(Department of Iron & Steel)**

*New Delhi, the 14th August 1961*

**S.O. 1957/ESS.COMM/IRON AND STEEL-2(c)/AM(83).**—In exercise of the powers conferred by sub-clause (c) of clause 2 of the Iron and Steel (Control) Order, 1956, the Central Government hereby directs that the following further amendment shall be made to the notification of the Government of India, in the Ministry of Steel, Mines and Fuel, No. S.R.O. 2041/ESS.COMM/IRON AND STEEL-2(c), dated the 11th June, 1957, as amended from time to time, namely:—

In the Schedule annexed to the said notification, in columns 2 and 3 thereof, against ‘ANDHRA PRADESH’, the following entry shall be added, namely:—

2

3

“6. All Tahsildars in the Andhra Pradesh 4, 5, 13 & 20.”

[No. SC(A)-2(9)/61.]

J. S. BAIJAL, Under Secy.

**MINISTRY OF FOOD & AGRICULTURE**

(Department of Agriculture)

*New Delhi, the 10th August 1961*

**S.O. 1958.**—In pursuance of clauses (i) and (k) of rule 4 of the General Grading and Marking Rules, 1937, the Central Government hereby fixes, with effect from the date of publication of this notification, the undermentioned charges for Agmark labels to be affixed on the containers of Palmarosa Oil, namely:—

"70 N.P. per 10 Kg. of Palmarosa Oil graded under Agmark".

[No. F. 24-7/58-AM.]

V. S. NIGAM, Under Secy.

(Department of Agriculture)

(Indian Council of Agricultural Research)

*New Delhi, the 9th August 1961*

**S.O. 1959.**—In exercise of the powers conferred by clause (a) of section 2 of the Indian Coconut Committee Act, 1944 (10 of 1944) and in supersession of the notification of the Government of India in the Ministry of Food and Agriculture (Department of Agriculture) No. F. 7-53/57-Com.I dated the 29th September, 1959, the Central Government hereby appoints the officers specified in column (1) of the Schedule hereto annexed to perform the duties of a Collector under the provisions of the said Act in respect of the areas specified in the corresponding entry in column (2) of the said Schedule.

**THE SCHEDULE**

(1)	(2)
1. The Collector of Central Excise, Baroda.	The State of Gujarat.
2. The Collector of Central Excise, Bombay.	The districts and talukas of the State of Maharashtra other than specified in items (11) and (13).
3. The Collector of Central Excise, Madras.	The State of Madras.
4. The Collector of Central Excise, Mysore.	The State of Mysore.
5. The Collector of Central Excise, Calcutta and Orissa.	The districts of Calcutta, 24-Parganas, Howrah and Midnapur of the State of West Bengal and in the State of Orissa.
6. The Collector of Central Excise, Allahabad.	The State of Uttar Pradesh.
7. The Collector of Central Excise, Shillong.	The State of Assam and the Union territories of Tripura and Manipur.
8. The Collector of Central Excise, Delhi.	The State of Punjab, Jammu and Kashmir and Rajasthan and the Union Territories of Himachal Pradesh and Delhi.
9. The Collector of Central Excise, Hyderabad.	The State of Andhra Pradesh.
10. The Collector of Central Excise, Patna.	The State of Bihar.
11. The Collector of Central Excise, Nagpur.	The State of Madhya Pradesh and districts of Chanda, Bhandara, Nagpur, Akola, Buldhana, Yeotmal, Amraoti, Wardha and Rajura of the State of Maharashtra.
12. The Deputy Commissioner, Andaman and Nicobar Islands, Port Blair.	The Union Territories of Andaman and Nicobar Islands.

(1)	(2)
13. The Collector of Central Excise, Poona.	The districts of Ahmednagar, East Khandesh, West Khandesh, Nasik, Poona, North Satara, Sholapur, South Satara, Kolhapur, Aurangabad, Parbhani, Nanded, Bhir and Osmanabad, and Panvel (except Uran Mahal), Karjat and Khalpur talukas of Kolaba district and the district Thana except the talukas of Bassein, Dehanu and Paladhar, all of Maharashtra State.
14. The Collector of Central Excise, West Bengal.	The districts of the State of West Bengal other than those specified in item (5).
15. The Collector of Customs and Central Excise, Cochin.	The State of Kerala.

[No. F. 7-123/60-Com.I.]

SANTOKH SINGH, Under Secy.

**MINISTRY OF HEALTH***New Delhi, the 11th August 1961*

**S.O. 1960.**—In pursuance of Regulation No. 15 of the Dental Council of India Regulations for the Examination for qualifying a person registered in Part 'B' to register in Part 'A' of the Dentists Register maintained under the Dentists Act, 1948 (16 of 1948), it is hereby notified that the following candidates passed the (supplementary) Examination No. I, conducted by the Dental Council of India, at the Dental College & Hospital, Lucknow, in July, 1961. The Roll numbers of the candidates are given in bracket against their names:—

P. S. Devar (1)  
H. R. Kanwal (2)

S. BRATT, LDSc., FICD,  
Secretary,  
Dental Council of India.

[No. F. 3-5/61-GII.]

R. MURTHI, Under Secy.

**MINISTRY OF TRANSPORT & COMMUNICATIONS****(Dep'ts. of Communications & Civil Aviation)***New Delhi, the 8th August 1961*

**S.O. 1961.**—In exercise of the powers conferred by sub-rule (2) of rule 11, clause (b) of sub-rule (2) of rule 14 and sub-rule (1) of rule 23 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, the President hereby directs that the following amendments shall be made in the notification of the Government of India in the late Ministry of Communications No. SRO 631-B, dated the 28th February, 1957, namely:—

In the Schedule to the said notification:—

(1) in Part I, under the heading "Overseas Communications Service", for the existing entries, the following entries shall be substituted, namely:—

**"OVERSEAS COMMUNICATIONS SERVICE**

(1) (a) Assistant Administrative Officer.	} Director General	Director General	All
(b) Accounts Officer		Director (Administration)	
(2) (a) Assistant Engineer	} Director General	Director	All
(b) Chief Mechanician		General	
(c) Technical Assistant		Chief Engineer	
(3) Other posts	} Director General	Director General	Ali
		Deputy Director General (Traffic)	

(i)---(ii)"

(2) in Part II, under the heading "Overseas Communications Service" for the existing entries, the following entries shall be substituted, namely —

**"OVERSEAS COMMUNICATIONS SERVICE"**

*Headquarters Office*

(a) Mechanic Class II , Draftsman Estimator , Stenographer , Junior Checker Lower Division Clerk , Junior Switch Board Attendant, Engine Driver, Fitter , Carpenter , Mason , Motor Driver , Blacksmith ,	}	Director (Administration)	Director (Administration)	All Director General
--	---	------------------------------	------------------------------	-------------------------

*Other Centres (including Central Traffic Office, Bombay)*

All posts as at (a) above.		Head of Office	Head of Office	All Director General.
(b) Senior Accountant , Superintendents Head Office , Assistant Superintendent, Head Office , Office Superintendent Outstations, Stenographer to Director General, Selection Grade Clerk , Senior Store keeper , Junior Store keeper, Upper Division Clerk ,	}	Director (Administration)	Director (Administration)	All Director General
			Head of Office concerned	(1)–(iii) Director (Administration) in case the Head of Office is of a status lower than that of Director (Administration), otherwise Director General ,
(c) Assistant Supervisor , Assistant Statistician , Senior Telegraphist , Selection Grade Checker, Selection Grade Clerk, Upper Division Clerk , Senior Checker , Junior Telegraphist ,	}	Deputy Director General (Traffic)	Deputy Director General (Traffic)	All Director General.
			Head of Office Concerned	(1)–(iii) Deputy Director General (Traffic)
(d) All Other posts		Chief Engineer	Chief Engineer Head of Office concerned	All Director General. (1)–(iii) Chief Engineer "

G W BALCHANDANI Dy Secy.

**MINISTRY OF REHABILITATION**

**(Office of the Chief Settlement Commissioner)**

*New Delhi, the 7th August 1961*

**S O 1962**—Whereas the Central Government is of opinion that it is necessary to acquire the evacuated properties specified in the Schedule hereto annexed, in the State of Madhya Pradesh for a public purpose, being a purpose connected with the relief and rehabilitation of displaced persons, including payment of compensation to such persons,

Now, therefore, in exercise of the powers conferred by Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), it is notified that the Central Government has decided to acquire, and hereby acquires the evacuee properties specified in the said Schedule.

### THE SCHEDULE

Sl. No.	Particulars of the Property	Name of the Town and locality/village in which the property is situated	Name of the Evacuee	Remarks
1	2	3	4	5
<b>1 Agricultural land</b>				
	46.19 acres.			
	<i>Khasra No. Area</i>			
	66/2 1.02	In village Kanchan pura Tehsil and Distt. Bilaspur.	Noor Hussain S/o Miya- Faguldin and Abdul Aziz son of Noor Hussain.	
	144 0.40			
	166/1 0.02			
	340 0.75			
	341 21.25			
	342 2.29			
	347 3.06			
	350 3.30			
	424 0.26			
	506 13.84			
	46.19			
	Rent Rs. 16 Occupancy Right.			
2	Khasra Numbers of Agricultural land (28.15 Acres) 175/1, 180, 188, 429, 438 605, Patwari Circle Number 59 Occupancy Right. Rent Rs. 12/8/-	Village Dudhia Tehsil and Distt. Betul. (Betul).	Jabbar Khan son of Munshi Khan and Sakina Bi widow of Munshi Khan.	
3(i)	21.51 Acres of Agricultural land Patwari Circle Number 67	Village Bithli Tehsil Seoni.	Abdul Samad and Abdul Saffi Sons of Abdul Sattar Khan and Ataur Rehman son of Abdul Rehman.	
	<i>Khasra No. Area</i>			
	60 2.25			
	64 19.26			
	2 21.51			
(ii)	9.68 Acres of occupancy land Patwari Circle Number 67	Village Bithli Tehsil Seoni.	Abdul Samad and Abdul Saffi S/o Sattar Khan and Ataur Rehman son of Abdul Rehman.	
	<i>Khasra No. Area</i>			
	61 7.06			
	63 2.62			
	2 9.68			

1	2	3	4	5
4	14/92 Agricultural land Circle Khasra No. Area	Village Bam 48 hari Tehsil Seoni.	Abdul Latif and Bhiku Mohammad sons of Dhundhoo Khan.	
	129/2 0.81			
	130/2 1.00			
	151/3 0.05			
	89/1 7.36			
	91 0.79			
	93/2 4.70			
	281 0.21			
	7 14.92			
5	1.38 acres of agricul- tural land Khasra No. Area	Village Luthgaon Tehsil Narsinghpur.	Sheikh Shakoor and Sheikh Immam Khan Sons of Sheikh Chhut- tan.	
	112 1.15			
	202 0.23			
	2 1.38			
6	Agricultural land 2.04 acres. Survey Number 46 Khasra No. Area	Mouza Bahadan Tehsil and Distt. Jabalpur.	Abdul Shakoor Khan son of Ismail Khan and Amna Bi widow of Ibrahim.	
	76 0.93			
	85/2 1.11			
	2.04			
7	Agricultural fields Khasra No. Area	Village Shahpur Tehsil Katni Distt. Jabalpur.	Akbar Khan and Musami Gulshar Musammat.	
	334/4 2.00			
	395 0.04			
	396/1 0.03			
	396/2 0.02			
	397 0.16			
	5 2.25			
8	Agricultural fields Survey No. 499. Khasra No. Area	Village Mahavia Tehsil Katni.	Musammat Ghasitia.	
	30 0.94			
	43/2 1.38			
	2.32			
9	Agricultural Fields Khasra No. Area	Village Bamanwar Tehsil Katni.	Faizulla Khan.	
	78 3.40			
	Land Reve- 4.12 nue			
10	House Number 21.]	Village Kancharpura District Bilaspur.	Noor Hussain son of Miya Lajuddin and Abdul Aziz son of Noor Hussain.	

1	2	3	4	5
11	One house of 4 Chasama in Khasra No. 76.	Village Bichhala Raiyat Wari Patwari Circle 25 Tehsil Harda.	Mohammad Dabir and Mohammad Akhtar Sons of Mohammad Hassif.	
12	One House No. 242.	Naagoam Tehsil and District Chhatarpur.	Wazar Mohammad Ishak Mohammad and Razak Mohammad.	

[No. 4(7)/61-Land &amp; Rent]

*New Delhi, the 11th August 1961*

**S.O. 1963.**—In exercise of the powers conferred by clause (a) of Sub-Section (2) of Section 16 of the Displaced Persons (Compensation & Rehabilitation) Act (44 of 1954) the Central Government hereby appoints Shri M. G. Tosniwal, Managing Officer in the office of Regional Settlement Commissioner, Rajasthan, Jaipur for the State of Rajasthan as Managing Officer for the custody, management and disposal of compensation pool with effect from the date he took over charge of his office.

[No. 7(55)ARG/61.]

**S.O. 1964.**—In exercise of the powers conferred by Sub-Section (i) of Section 6 of the Administration of Evacuee Property Act, 1950 (XXXI of 1950) the Central Government hereby appoints for the State of Rajasthan, Shri M. G. Tosniwal, Managing Officer, in the Office of the Regional Settlement Commissioner, Jaipur as Assistant Custodian for the purpose of discharging the duties imposed on Custodian by or under the said Act with effect from the date he took over charge of his office.

[No. 7(55)ARG/61.]

M. J. SRIVASTAVA.

Settlement Commissioner & *Ex-Officio*  
Under Secy.**MINISTRY OF LABOUR & EMPLOYMENT***New Delhi, the 9th August 1961*

**S.O. 1965.**—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Bombay, in the industrial dispute between the employers in relation to the Sasti Colliery and their workmen.

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, BOMBAY****REFERENCE CGIT-20 OF 1961**

Employers in relation to the Sasti Colliery  
AND  
their workmen

**PRESENT:**

Shri Salim M. Merchant, Presiding Officer.

*Bombay, dated 31st July, 1961***APPEARANCES:**

*For the employers:* Shri S. V. Kanade, Personnel Officer and Shri P. D. Chaudhari, Manager, Ballarpur Colliery.

*For the workmen:* Shri K. Krishna Rao, General Secretary, Sasti Colliery Workers' Union, P.O. Ballarpur.

**STATE:** Maharashtra**INDUSTRY:** Coal mining



## AWARD

The Government of India, Ministry of Labour and Employment, by Order No. 2/98/61-LRII, dated 30th May 1961, made in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, (Act 14 of 1947), was pleased to refer to me for adjudication, the industrial dispute between the parties abovenamed, in respect of the subject matters specified in the following schedule to the said order:—

## SCHEDULE.

"Whether the management of Sasti Colliery of Ballarpur Collieries have implemented the terms contained in the award of the arbitrator (Shri A. Das Gupta) relating to issue No. 10 in the Colliery disputes Arbitration in the cases of night chowkidars (i) Shri Laxman Kisan (ii) Shri Kalwala Pocha (iii) Shri Kaplinga Jogayya (iv) Shri Nepal Pun (v) Shri Lal Sukh (vi) Shri Partiman Gharti (vii) Shri Mahaboob Khan (viii) Shri Jakka Pun (ix) Shri Sadashiv Jairam and in the cases of office peons Sarvashri (i) Ramchandra Maroti (ii) Pandhari Pandilwar (iii) Rajjan Tiwari (iv) N. R. Wagh? If not, what relief should be given to them and from what date?"

2. After the parties had filed their written statements, the dispute was taken up for hearing at Bombay on 25th July 1961. The short question involved in this dispute is whether the management of the Sasti Colliery of Ballarpur Collieries have implemented the terms of the award relating to issue No. 10, before the learned Arbitrator, Shri A. Das Gupta, in the Colliery Disputes Arbitration, in the matter of wage scales for night chowkidars and office peons. The order of reference mentions the names of 9 alleged night chowkidars, but at the hearing it was ascertained that there was only one full time night watchman in the colliery and it is admitted that he has been put in the scale of Rs. 30—1—42 prescribed for night watchmen by the award of the Arbitrator, Shri A. Das Gupta, in the arbitration proceedings referred to in the schedule to the order of reference.

3. With regard to the remaining watchmen, it is the admitted position that they do the duty of watchmen by rotation and, therefore, each of them does night duty in this Colliery for one week in the month in the night shift which is from 11 P.M. to 7 A.M. After a certain amount of discussion at the hearing the parties were agreed that the management will pay a night shift allowance of annas -/8/- (50 naye paise) to each of the other watchmen for the week during which they are required to do night duty, and proportionately for the number of days in which night duty is done by them and I direct that this practice shall come into operation from the date this award becomes enforceable.

4. With regard to the office peons, the order of reference mentions the name of Sarvashri (i) Ramchandra Maroti (ii) Pandhari Pandilwar (iii) Rajjan Tiwari and (iv) N. R. Wagh. For the peons, the learned Arbitrator Shri Das Gupta, prescribed the scale of Rs. 28— $\frac{1}{2}$ —30—1—40. The management at the hearing stated that it had only two sanctioned posts of peons and that Shri Pandhari Pandilwar and Shri Rajjan Tiwari, serial Nos. (ii) and (iii) in the schedule to the order of reference are permanent office peons since 6th November 1959 and 1st October 1958 respectively, and they have been confirmed as such with effect from 1st June 1961, in the scale of Rs. 28— $\frac{1}{2}$ —30—1—40 prescribed by the Das Gupta Award. At the hearing it was agreed that Shri Pandhari Pandilwar and Shri Rajjan Tiwari shall be given the benefit of the said scale for peons with effect from the date of the Das Gupta Award i.e. from 29th December 1959 but if their present daily wage happens to be higher, then the same shall be protected and I direct accordingly. With regard to the remaining two peons it was stated at the hearing that the real name of Shri N. R. Wagh, serial No. (iv), is Waman Ramchandra and that he is the workman who has been mistakenly referred to as N. R. Wagh in the order of reference. The management's case was that these two workmen are unskilled mazdoors and not peons and that Ramchandra Maroti, serial No. (i), had joined service on 13th April 1957 and Waman Ramchandra had joined service on 1st November 1960. At the hearing the management also agreed that both these workmen viz., Ramchandra Maroti and Waman Ramchandra will be treated as confirmed unskilled mazdoor in category 1. The union was acceptable to this suggestion, and I, therefore, direct accordingly.

5. The only question that remains to be dealt with is the question of costs. The General Secretary of the union, Shri K. Krishna Rao, has stated that he had to incur about Rs. 36 as return railway fare for himself to attend the hearing of the dispute in Bombay. Considering this, I think a provision of Rs. 60 as costs in favour of the union would be reasonable and I direct that this amount shall be

paid by the employers in relation to the Sasti Colliery to Shri K. Krishna Rao, General Secretary of the Sasti Colliery Workers' Union, within a week of this award becoming enforceable.

**SALIM M. MERCHANT,**  
Presiding Officer,

Central Government Industrial Tribunal, Bombay.

[No. 2/98/61-LRII.]

**S.O. 1966.**—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the industrial dispute between the employers in relation to the Sirka Colliery and their workmen.

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DHANBAD**

**REFERENCE No. 9 OF 1961**

**Employers in relation to the Sirka Colliery**

**AND**

**Their workmen.**

*Bombay, dated the 29th July, 1961*

**PRESENT:**

Shri Salim M. Merchant, Presiding Officer, Central Government Industrial Tribunal, Dhanbad.

**APPEARANCES:**

Shri S. S. Mukherjea, Advocate, with Shri J. P. L. Sinha, Group Personnel Officer for the employers.

Shri S. K. Mukherjea, Advocate with Shri P. D. B. Choudhury, Hon. General Secretary, Colliery Staff Association for the workmen.

**STATE:** Bihar.

**INDUSTRY:** Coal.

**AWARD**

The Government of India, Ministry of Labour and Employment, by Order No. 2/201/60-LR.II, dated 21st March 1961 made in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (XIV of 47) was pleased to refer to me for adjudication the industrial dispute between the parties above named in respect of the subject matters specified in the following schedule to the said Order:—

**SCHEDULE**

“Whether the management of Sirka Colliery was justified in not taking into account the services rendered before 25th May 1950 by Shri Bodhia Saw, a Grade III clerk, while fixing his wages as per the award of the All India Industrial Tribunal (Colliery Disputes) as modified by the decision of the Labour Appellate Tribunal. If not, to what relief is he entitled?”

2. After the parties had filed their respective written statements, the dispute was heard by me at Dhanbad on 17th July, 1961.

3. Some relevant facts with regard to the service of Bodhia Saw, the workman concerned, may first be stated. It is admitted that Bodhia Saw joined the services of this colliery as Cartridge Maker in 1943. Whilst the management in its written statement has stated that he joined service on 15th November 1943, from the documents filed by the union it is clear that Bodhia Saw was in the services of the colliery by June 1943, as there is an authorisation dated 14th June 1943 issued by the Manager of this colliery under the Indian Mines Act and Indian Mines Regulations 1926 for his appointment as Gun Powder Issuer and Cartridge Maker (Ex. W.1). He appears to have worked in that capacity till some time in 1946, after which he was, from time to time employed explosives and rations issuer and register keeper on a basic pay of annas 14 per day. He appears to have worked as a ration clerk from the end of 1948 to June 1959. In implementation of the award of the All India Industrial Tribunal (Colliery Disputes) (hereinafter referred to as the Majumdar Award), the Management placed Bodhia Saw in the clerical Grade III, for which the awarded scale of pay was Rs. 36—3—75, but continued him as a daily rated weekly paid workman. The management's case,

however, is that from 1st June 1956, the date on which the Majumdar Award came into force, his basic pay per week was raised to Rs. 9 per week which gave him a total wage of Rs. 36 per month being the minimum wage prescribed for the Grade III clerk, by the Majumdar Award.

4. From the above facts it is clear that after joining service in 1943, Bodhia Saw had worked in non-clerical posts till 1947 and that between 1947 to 1956 i.e. for 9 years, he had been doing clerical work. It is also admitted that as on 1st June 1956, the date the Majumdar Award came into force, Bodhia Saw had completed 13 years service.

5. It is necessary next to refer to certain directions contained in the Majumdar Award and the Labour Appellate Tribunal's decision dated 29th January 1957, which modified it. The Majumdar Award had, as I have stated earlier, awarded for grade III clerks the monthly scale of pay of Rs. 36—3—75. The Majumdar Award did not grant any increments in adjusting the existing wage into the monthly scales of pay prescribed by it, on the basis of the length of the past services of the workman. The Labour Appellate Tribunal raised the scale of pay for grade III clerks to Rs. 43—3—82 and in paragraph 316 of its decision it gave certain directions with regard to how the then existing pay of the clerks was to be adjusted into new scales of pay prescribed by it. In para 316 the LAT observed and directed as follows:—

"316(1) Those who are below the minimum of their respective scales as prescribed by us shall be pulled up to the minimum, and those who are in between two stages of their revised scales shall be placed at the stage next above their pre-award basic wages.

(2) After adjustment as aforesaid, workmen shall be given one increment for every four completed years of service subject to the maximum of three increments provided,

(a) their basic pay thereby does not exceed what they would have been entitled to if they had started initially in the scale prescribed by us and had been given point to point adjustment, or

(b) their basic pay thereby does not exceed the maximum limit of their respective scales as now given."

6. Now, when the company implemented the Majumdar Award, it placed Bodhia Saw in the Clerical Grade III, but it did not give him a monthly scale of pay, but continued to keep him on the daily rate of pay on weekly payment basis. He was, however, paid at the rate of Rs. 9 per week with effect from 26th May 1956 in implementation of the Majumdar Award. In implementation of the Labour Appellate Tribunal's decision Bodhia Saw was placed at the minimum of the monthly scale of Rs. 43—3—82 i.e. he was given the basic pay of Rs. 43 only with effect from 1st June 1956. In other words, in implementation of the Labour Appellate Tribunal's decision he was not given any increments in the scale of pay prescribed for grade III clerks for the services rendered by him before 26th May 1956. He was of course granted the annual increments which became due to him thereafter in 1957 and 1958 and onwards.

7. The union's claim is that in implementation of the Majumdar Award as modified by the decision of the LAT, Bodhia Saw was, on the basis of his 13 years' service with the company as on 26th May 1956, entitled in all to 3 increments of Rs. 3 each on the basis of one increment for every 4 years service rendered by him prior to 26th May 1956. In other words, what the union says is that with effect from 26th May 1956 Bodhia Saw was entitled to a basic pay of Rs. 43 plus Rs. 9 i.e. Rs. 52 and that he was thereafter entitled to the subsequent annual increment in the scale of Rs. 43—3—82. The management's contention on the other hand is that since Bodhia Saw was in the daily rated weekly paid category before the Majumdar Award, his services during that period could not be taken into consideration for increment when placed in the monthly category in implementation of the Majumdar Award as modified by the Labour Appellate Tribunal's decision. I am unable to accept this contention of the management. From the directions of the Majumdar Award it is quite clear that it had placed all workmen in the collieries doing clerical work on a monthly scale of pay. I am of the opinion that the company was clearly and palpably in the wrong in continuing to keep Bodhia Saw on a daily rated weekly paid basis, after the Majumdar Award came into force on 26th May 1956, after which date every clerk working in the collieries was entitled to be placed in the monthly scale of pay and to get the annual increments of that scale with all the benefits which flowed from his being made monthly rated. It appears to me to be quite clear that the directions in para 316 of the Labour Appellate Tribunal decision apply irrespective of whether the clerk

on the date the Majumdar Award came into force i.e. on 26th May 1956 was on monthly rate of pay or was daily rated but weekly rated. The Majumdar Award has in para 767 referred to the bewildering variety of the grades and rates of pay which were prevalent in the collieries and has observed as follows:—

"767.....What we find is a bewildering variety of grades. There are weekly paid or even daily paid clerks getting a basic wage of less than one rupee. In some cases there are no grades and where they exist they are not regular. The so-called discretion is the determining factor. It is not necessary to refer to the various statements. Suffice to say for the present that there is no uniformity either in the scales or in the grades obtaining in the collieries."

What the Majumdar Award did was to place all clerical staff working in the collieries in three grades and to prescribe for each grade a monthly scale of pay. I am not for a moment prepared to accept that the directions of para 316 of the Labour Appellate Tribunal's decision were not to apply to clerks who were daily rated but weekly paid on the date the Majumdar Award came into force. Shri Mukherjee, Advocate, for the employers has referred to the expression "monthly rated workmen" appearing in para 315 of the Labour Appellate Tribunal's decision. But on a careful reading of para 316 it is clear beyond doubt that the method of adjustment which was granted was to apply to both daily rated as well as to the monthly rated clerks, on the basis of the length of their past service.

8. It was next urged by the management that in computing the length of past service, of the clerk as directed by para 316(2) of the Labour Appellate Tribunal's decision for the purposes of the increments to be given to him, his service as a clerk only should be taken into account and not his total length of service. The management has on that basis submitted that as Bodhia Saw had worked as a clerk from 1947 to 1956 i.e. for only 9 years prior to the Majumdar Award coming into force on 26th May 1956, he was at best entitled to two increments, on the basis of one increment for every four years completed service of Rs. 3 each i.e. Rs. 6 as a grade III clerk as on 26th May 1956. Thus according to the company he was entitled after adjustment to a basic salary of Rs. 49 as on 26th May 1956 and not of Rs. 52, as claimed by the union. In this connection the management has referred to the award on issue No. 12 at page 70 of the learned Arbitrator, Shri A. Das Gupta. Issue No. 12 before Shri Das Gupta was whether for calculating the length of service for the purpose of increments, the total service from the date of appointment should be taken into account or not. Shri Das Gupta in his award after referring to the directions the Majumdar Award and the decision of the Labour Appellate Tribunal came to the conclusion that—

"If his substantive appointment is to the higher job and if he is to be fitted into the grade corresponding to it, his total length of service from the date of appointment to the higher job shall be reckoned according to the said rule."

On the basis of this interpretation Bodhia Saw, in my opinion for the 9 years work done by him as a clerk from 1947 to 1956, was entitled to two increments above the minimum basic of Rs. 43 in the clerical Grade III i.e. to a basic salary of Rs. 49 with effect from 26th May 1956 and I am satisfied that that is the correct method of adjustment of his salary.

9. I would, therefore, answer the first question under reference by holding that the management of Sirka colliery was not justified in not taking into account the services rendered before 26th May 1956 by Bodhia Saw while fixing his wages as per the award of the All India Industrial Tribunal (Colliery Disputes) as modified by the decision of the Labour Appellate Tribunal. I further hold on this point that services rendered by him as a clerk prior to 26th May 1956, should only be taken into account for the purposes of computing the increments he was entitled to in adjusting him in the salary scale for grade III clerks prescribed by Labour Appellate Tribunal. On that basis his 9 years services as a clerk from 1947 to 1956 should only be taken into account for the purposes of determining the increments he was entitled to. On that basis Bodhia Saw was entitled to a Basic pay of Rs. 49 per month from 26th May 1956 and not Rs. 43 as fixed by the company nor Rs. 52 as claimed by the Union.

10. The union has made a grievance that by not fitting Bodhia Saw in the monthly scale of pay with effect from 26th May 1956, the management has deprived him of the higher rate of earned leave, with higher accumulation which he would have been entitled to had been placed in the monthly scale of pay with effect from 26th May 1956. There is no doubt that had Bodhia Saw been placed

in the monthly scale of pay in implementing the Majumdar Award with effect from 26th May 1956, he would have been entitled to higher earned leave with pay in the year at least from 1st January 1957 than he was entitled to as a daily rated but weekly paid workman. In this connection Shri Mukherjee, the learned advocate for the employers has referred to the provisions of Section 51 of the Mines Act, and he has argued that that section does not speak of clerical or non-clerical workmen but only of monthly or weekly rated employees. I fail to see how after Bodhia Saw became entitled under the Majumdar Award to a monthly scale of pay from 26th May 1956, he could be treated as a weekly rated employee and given the lower rate of earned leave, than a monthly rated employee would have been entitled to. It has been argued by the management that the question of what rate of earned leave Bodhia Saw became entitled to from 26th May 1956 is not a matter covered by the instant reference because the reference does not in terms refer to any benefit of earned leave to be granted to Bodhia Saw. But in my opinion on becoming entitled to the monthly rate of pay from 26th May 1956 Bodhia Saw consequentially also became entitled, though it may be from 1st January 1957 to the higher rate of earned leave which monthly rated employees were then entitled to, and I do trust the management will do the fair thing by him by allowing him earned leave at the higher rate prescribed for monthly rated staff from 26th May 1956 or such date thereafter from which such higher leave would accrue to him, and will also give him the benefit of higher accumulation of leave to which he would have become entitled to if he had been placed as he should have been placed, in the monthly scale of pay from 26th May 1956 under the Majumdar Award as modified by the decision of the Labour Appellate Tribunal.

11. In the overall result, I direct that the dues of Bodhia Saw shall be calculated on the basis that he was entitled to a basic pay of Rs. 49 in the clerical grade III of Rs. 43—3—82 from 26th May 1956 with the benefits of annual increments thereafter and whatever is found due to him on that basis shall be paid to him within a month of this award becoming enforceable.

12. Since the workmen have mainly succeeded I award Rs. 100 as costs to the union.

**SALIM M. MERCHANT,**

Presiding Officer,

Central Government Industrial Tribunal, Dhanbad.

[No. 2/201/60-LRII.]

*New Delhi, the 10th August 1961*

**S.O. 1967.**—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the industrial dispute between the employers in relation to the Pure Golukdih Colliery and their workmen.

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DHANBAD**

**REFERENCE No. 24 of 1961**

Employers in relation to the Pure Golukdih Colliery

AND

their workmen.

**PRESENT:**

Shri Salim M. Merchant, Presiding Officer,

*Dated 29th July 1961 (Camp Bombay)*

**APPEARANCES:**

**For the employers.**—Shri S. S. Mukherjee, Advocate and Shri R. C. Agarwala, Partner.

**For the workmen.**—Shri S. Bose, Member, Executive Committee Colliery Mazdoor Sangh.

**STATE:** Bihar.

**INDUSTRY:** Coal.

**AWARD**

The Government of India, Ministry of Labour and Employment by order No. 2/22/61-LRII dated 22nd April 1961 made in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947

(14 of 1947) was pleased to refer the industrial dispute between the parties above-named in respect of the subject matters specified in the following schedule to the said order, to me for adjudication—

#### SCHEDULE

"Whether the demand of the workmen for measuring and recording the tubs underground where the tubs are loaded and not at the pit top, is justified? If so, to what relief, if any, they are entitled from the date of the award?"

2. It is admitted that the Pure Golukdih Colliery, hereinafter referred to as the colliery, is worked by the incline method and the average gradient of the colliery is one in ten as deposed to by the Manager of the Colliery—(witness MW.1). It is further admitted that the tubs in this colliery are 40½ c.ft. in size and that they are hauled up to the surface by an electric haulage. At the inspection of the colliery made by me on 18th July 1961, I saw the loaded tubs being hauled up to the surface. The present practice, admittedly, is that the tubs are measured and the measurements recorded at the incline mouth i.e. the pit top. The workmen have certain grievances against this system and their demand is that the tubs should be measured and the measurement recorded underground where they are loaded and not at the pit top and the first question under reference is whether this demand is justified.

3. The main argument urged by Shri Bose in support of this demand is that the management has been making indiscriminate deductions in the number of tubs after they reach the surface, without the knowledge of the workmen concerned and that the miners complain that as the loading is done by them in the underground and the measurements are taken on the surface they are not even aware of what deductions are made. Their complaint is that these deductions adversely affect the workmen's earnings every week and they, therefore, claim that in order to eliminate this malpractice the proper thing to do should be to record the measurements of the tubs at the loading point in the underground. It has also been urged on behalf of the workmen that they actually are made to load the tubs above the water level, in a heaped spoon shape, and that, thereby, they are made to load more than 40½ c.ft. of coal in each tub while at best payment is made to them for 40½ c.ft. when one tub is allowed and that they stand to lose when indiscriminate deductions are made. The union's case has been that in the vicinity of this colliery the practice is to record the measurements of tubs at the loading point underground.

4. The case for the management on the other hand is that the loaded tubs are being checked and measured at the surface since a long time without any objection from the workmen; that this system has been working smoothly and peacefully and that such a system is also prevalent in the collieries in the neighbourhood. The management's main ground in justification of this practice is that the miners when loading the tubs indulge in what is popularly known as 'fora' loading, by which is meant that big lumps of coal are kept in the tubs in such a position that a certain amount of hollow space remains inside the tub but from outward appearance the tub looks fully loaded; that only when the tub is hauled up is it possible to detect whether the workmen have resorted to 'fora' loading, because if there has been 'fora' loading then because of the movement of the tubs during haulage the coal settles down and the hollow spaces are filled in, thus bringing the level of the coal loaded in the tub to below water level. It is, therefore, argued that by measuring the tubs at the surface the miners are being paid wages for the actual amount of coal loaded by them. It is further pointed out that the percentage of defective loading is very small and the number of tubs deducted is only about 1% of the total tubs hauled up and that the company has been making deductions only when there is underloading, as determined on the surface. The management stated that the practice is for tub-checkers to check the tubs at the surface in each shift and to maintain duplicate measurement cards, one of which is issued to the concerned miner and the other retained by the management, and that any underloading detected by the tub-checker is at once entered in the measurement slip card at the spot and that each workman is expected to carry with him his copy of the measurement slip card and that all deductions in the cards are noted in the presence of the miner or gang of miners who have loaded the particular tub. The management has therefore submitted that it is only proper that the measurements are recorded when the hollows settle down when any defective or "fora" loading becomes apparent and that underground recording if resorted to would lead to friction between the employer in charge of making the record and the workmen underground.

5. At the hearing both parties led oral evidence, the union having led the evidence of one Ram Dev Rai, Coal Cutter, Bengal Jharia Colliery (P.W. 1) who in his evidence stated that in his colliery the practice was to measure loaded tubs at the loading point and not at the surface. On the other hand the management has led the evidence of the Manager of the Colliery, Shri Nalini Kanta Roy (M.W. 1), who stated that he had heard that in the adjoining collieries the practice was to measure the tubs on the surface. He, however, admitted that in one of the collieries in the neighbourhood the practice was to measure tubs underground at the loading point. The oral evidence, however, does not conclusively settle the point as it does appear that in their neighbourhood there is no uniform practice of measuring the loaded tubs either in the underground or on the surface, nor does there seem to be a uniform practice with regard to this in the Jharia coal-field, where this colliery is situated.

6. In my opinion, for a decision of this question the provisions of Rule 17 of the Payment of Wages (Mines) Rules which relates to measurement of work done by piece-rated workers is relevant and important. Rule No. 17 is as follows:—

"In the case of piece workers the surveyor who measures the work for such workers, shall at the time of measurement, hand over to the miners a statement in writing containing the measurement figures immediately after taking the measurements in the presence of the workers concerned. A record of measurement shall also be maintained in a measurement book of permanent nature and at the close of the wage period a list of measurements shall be written up under the signature or thumb impression of the workmen and a copy thereof shall be given to the workers also. In case of disputes regarding measurements, the surveyor shall, as far as possible, settle the dispute on the spot."

7. Shri Mukherjee, learned Advocate for the management has sought to argue that this rule does not apply to measurements of tubs loaded by miners and he has argued that this rule applies to measurement of other piece work such as is done by mine drivers which would require measurement by measuring tapes. I cannot accept this ingenious argument of Shri Mukherjee. Unquestionably the work of cutting coal and loading tubs which these miners do is piece-rated work because they are paid on the basis of the quantity of coal cut and loaded by them. No doubt the coal is loaded in tubs of a certain specified capacity. But when deductions are made it involves a measurement of what short loading there has been by the workmen. In my opinion, by the employers measuring the loaded tubs on the surface they are not complying with the provisions of Rule 17 of the Payment of Wages (Mines) Rules. I am also satisfied that the practice of measuring the tubs on the surface in force in this colliery is not fair to the workmen.

8. The management's case is that the measurements are recorded each day in the presence of the miners concerned on the surface and duplicate measurement slip cards are given to them in which are also recorded the measurements allowed. But from the on the spot inspection taken by me in the presence of the representatives of the parties, I am not satisfied that in actual practice the measurements are recorded in the presence of the miners or that the duplicate of the measurement slip cards actually remain in the possession or custody of the miners. From questions put by me to some of the miners at the inspection it was quite clear that they did not know what entry had been made in their measurement slips for the tubs allowed, even on the previous day. I am also not satisfied that the duplicate copies of the measurement slips remain with the workmen as several of them were produced at the time of inspection by the management itself. Some of the miners did not have the measurement slips with them or in their quarters. I am, therefore, satisfied that the present practice of measuring and recording the tubs on the surface is far from satisfactory and is liable to be abused, and under it the workmen stand to get less payment than they are entitled to. While the management complains that there is "fora" filling, the workmen complain that the tubs have to be filled at a level higher than the water level of the tubs, which means that the tubs have to be filled at a level higher than the water level of the tubs. It is admitted that until water level the cubic contents of the tubs in use in this colliery are 40½ c.ft. By heaped spoon loading clearly the miners load more coal than they are paid for and I noticed that each one of the five tubs which was hauled up to the surface during my inspection on 18th July 1961, was heaped spoon filled, which meant that the miners had given extra load than at the water level of the tubs. But in each case they were allowed payment for one tub only, though there was excess loading, in excess of 40½ c.ft. In these circumstances, I

am not satisfied that the management is justified in insisting on continuance of the present practice of measuring the tubs on the surface and the demand of the workmen for measuring and recording the tubs underground, where they are loaded, is justified and I answer the first question under reference accordingly.

9. The next question to consider is what relief, if any, the workmen are entitled to from the date of the award. The only direction that can be made on this point is that the practice of measuring and recording the tubs underground at the loading point shall be introduced. With regard to the date from which this practice shall come into force, I think about 2 months time should be enough. I therefore direct that the practice of measuring and recording the tubs underground at the loading point shall be introduced from 1st October 1961.

10. As the workmen have succeeded an order for costs in favour of the union appears to be justified. I therefore make an order for costs of Rs. 50/- in favour of the union to be paid within a month of the publication of this award in the official gazette.

**SALIM M. MERCHANT,**

Presiding Officer,  
Central Government Industrial Tribunal,  
Dhanbad.

[No. 2/22/61-LRII.]

*New Delhi, the 11th August 1961*

**S.O. 1968.**—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the industrial dispute between the employers in relation to the Loyabad Colliery Workshop and their workmen.

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DHANBAD.**

**REFERENCE No. 8 of 1961**

Employers in relation to the Loyabad Colliery Workshop

**AND**

their workmen.

**PRESENT:**

Shri Salim M. Merchant, Presiding Officer.

Camp; Bombay: Dated 2nd August 1961.

**APPEARANCES:**

*For the employers:* Shri S. S. Mukherjee, Advocate with Shri J. L. Sinha, Group Personnel Officer and Shri M. Ali, Manager Loyabad Colliery Workshop.

*For the workmen:* Shri Lalit Barman, General Secretary, Loyabad Labour Union.

**STATE:** Bihar.

**INDUSTRY:** Coal Mining.

### **AWARD**

The Government of India, Ministry of Labour and Employment by Order No. 2/225/60-LRII dated 21st March 1961, made in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Act 14 of 1947), was pleased to refer the industrial dispute between the parties above-named in respect of the subject matters specified in the following schedule to the said order to me for adjudication:—

### **SCHEDULE**

"Having regard to the nature of duties performed by Sarvashri M. R. Ghose, B. N. Gupta, Gabriel Mondal and Shamshed Khan, Clerks Grade III of Loyabad Colliery Workshop, whether the demand of the workmen for placing the said persons as Grade II Clerks is justified. If so, with effect from which date after 2nd July 1959?"

2. Before dealing with the demand on its merits, it is necessary to state that the award of the All India Industrial Tribunal (Colliery Disputes), hereinafter



referred to as the Majumdar Award, classified the clerical staff employed in the collieries into grade I, grade II and grade III and the schedules of their nomenclature and grading have been stated in appendix XVI to Vol. II of the said award at page 112. The important fact to notice about the classification of the clerical staff into three grades is that the classification has been done on the basis of nomenclature or designation.

3. The Majumdar Award prescribed for grade III clerks the pay scale of Rs. 36—3—75 which the Labour Appellate Tribunal by its decision dated 29th January 1957 raised to Rs. 43—3—82 and for grade II the decision prescribed the improved scale of Rs. 48—3—57—4—3.

4. In implementation of the Majumdar Award as modified by the Labour Appellate Tribunal, the employers in relation to the Loyabad Colliery classified their clerks into the three grades of scales prescribed. But in doing so, each clerk was not given any designation but clerks in grade III were generally designated as "clerk grade III", "clerk grade II", and "clerk grade I", and were paid the scales of pay prescribed by the Labour Appellate Tribunal's decision.

5. It is admitted that prior to the Majumdar Award, the clerks in the Loyabad Colliery and its workshop were also designated according to nomenclature and that the union has made a complaint when the management in implementing the Majumdar Award classified the clerks as belonging to grade III, grade II or grade I without specifying their designations, the Union contends that the management's method of classification was not a proper classification under the Majumdar Award as amended by the Labour Appellate Tribunal as it is not based on the nature of the duties the workmen have to perform, and I shall presently deal with this contention.

6. The short question that falls for determination in this dispute is whether, considering the nature of their duties, the demand for these four workmen to be placed in grade II for clerks is justified? In the workshop of the Loyabad Colliery, which forms part of the colliery of that name, there are at present about 20 clerks employed, of whom 2 are in grade I, 9 in grade II and 9 in grade III, including these four clerks directly concerned in this reference, who were already in service when the Majumdar Award came into force on 26th May 1956 and the remaining 5 were all recruited after 1956. I may as well here state that as from 1st June 1961 these four workmen are drawing the following basic pay in the clerical grade III scale of Rs. 43-3-82.

Shri M. R. Ghose—Rs. 79/-

Shri B. N. Gupta—Rs. 70/-

Shri Gabriel Mandal—Rs. 63/-

Shri Shamshad Khan—Rs. 64/-

7. The union's case in support of its demand is that prior to the award these employees were designated as "shop clerks", and against each of them the shop to which he was attached was also mentioned e.g. machine shop clerk, electrical shop clerk, technical shop clerk etc. It is admitted that this workshop has several shops or sections. The fact that these workmen were designated as stated by the union is not denied by the management which has, however, stated in its written statement that those designations were loosely used in the coal industry in general. There is, however, no designation like "shop clerk" in appendix XVI of the Majumdar Award.

8. In the annexure to its written statement the Union has given details of the jobs performed by each of these four clerks and on the basis of the nature of these duties performed by them it claims that they are entitled to be placed in the clerical grade II.

9. The union has urged that each of these four clerks have to maintain a number of records relating to the work done in the shops, and have also to maintain indents, report attendances, make reports of jobs given and done, materials required and used etc., which are duties of a specialised nature which entitle them to be placed in the clerical grade II.

10. The company in its written statement has urged that these four clerks perform duties, "of the simplest nature requiring no originality, special skill or difficulty", and that the details in the annexure to the union's written statement regarding the work done by these four clerks have been given without proper appreciation of the nature of the jobs which they perform. The management has

in its written statement given its comments on the nature of the jobs performed by each of these four workmen. It has argued that the work of these four clerks is similar to those of "production clerks" who have been placed in the clerical grade III under appendix XVI and that these clerks cannot be classified as "workshop clerks", who have been given the clerical grade II under Appendix XVI of the Majumdar Award. The management has further stated that the main duties of workshop clerks are of "costing" which these clerks are not required to perform, and it has, therefore, submitted that having regard to the duties performed by these four clerks they have been correctly placed in the clerical grade III.

11. At the hearing, the management led the evidence of the Manager of its workshop, Shri Maqsood Ali, who has deposed in a fair and straight forward manner. This witness has by and large admitted the various jobs stated to be performed by these clerks in the annexure to the written statement of the union, but he has offered clarification with regard to certain duties which the union claims these workmen are required to do.

12. I have considered the oral and documentary evidence on record with some care, and considering the nature of the duties performed by each of these four clerks, I am satisfied that Shri M. R. Ghose, serial No. 1 and Shri B. N. Gupta, serial No. 2, to the order of reference only, are entitled to be placed in grade II for clerks.

13. I am of the opinion that a fundamental mistake has been made by the management in classifying clerks as belonging to "grade III", without mentioning their designation. The classification of clerks into the three grades under Appendix XVI has been made by the Majumdar Award on the basis of their nomenclature and designation and by clerks being classified into grades III, II and I, without their designations or nomenclatures being specified has given rise to a crop of disputes and differences.

14. In this dispute, the question to decide is whether on the basis of the nature of the duties performed by these workmen their demand for being placed in the clerical grade II is justified? From the evidence on record I am not satisfied that Sarvashri M. R. Ghose and B. N. Gupta are performing merely duties of the simplest or routine nature, and I am also not satisfied that they only perform the duties of what are known as 'production clerks'—as contended by the management. It is admitted in evidence that Shri Ghose is keeping a record of the production of casting materials and that his duties are connected with the foundry shop, tindals and the blacksmith shop. It is further admitted that originally there were 16 men employed in the foundry shop whose number has recently increased to about 24 and the number of tindals is 26 and blacksmiths 19 and that these workmen have to be allotted different jobs every day and a record of the various jobs done by them has to be maintained by Shri Ghose. In order to maintain this record Shri Ghose has to consult each workman about the work done by him. This duty taken together with the other admitted duties performed by him and the fact that the foundry produces materials worth about 20,000 a month and that Shri Ghose has to maintain a record of the items produced in the foundry along with its value, no doubt by a given mathematical formula, I am satisfied that the duties which Shri Ghose performs are not of the simplest nature requiring no originality or special skill. I, therefore, hold that having regard to the nature of the duties performed by Shri M. R. Ghose, he is entitled to be placed in the clerical grade II. It may also be mentioned here that Shri Ghose is one of the senior clerks in Grade III, whose basic salary on 1st June 1961 was Rs. 79/- in grade III, whereas the scale of pay of grade II clerks is Rs. 48-3-57-4-93.

15. Regarding Shri B. N. Gupta he has to maintain the stores requisition of the electric shop, painting shop and the frigidaire section which is part of the electric shop. While the union claims that Shri Gupta does original correspondence, the management's contention is that he does so only on dictation by the foreman. But it is admitted that some of the foremen of the shops are illiterate. It can therefore safely be presumed that Shri Gupta attends to certain correspondence work also. The management has contended that only those clerks who attend to the clerical work of the entire workshop can claim to be classified as store clerks and put in grade II. There is no warrant for such a presumption. It may well be imagined that a clerk who does variegated duties in connection with one or more shops or sections of the workshop, would be doing more responsible and intelligent work than a clerk who may be doing some simple duty of maintaining a record concerning the workmen of all the shops or sections in the workshop. I am satisfied on a consideration of the duties performed by Shri B. N. Gupta, whose basic salary as

on 1st June 1961 was Rs. 70/- per month, that he also is entitled to be classified as clerk grade II.

16. As regards the other two clerks viz., Shri Gabriel Mondal and Shri Shamshad Khan, I am not satisfied that on the nature of the duties performed by them they can claim to be placed in the clerical grade II. They have still to travel a long way before they can reach the maximum of the clerical grade III. It may well be that before they reach the maximum of grade III, their work may justify their being put into grade II.

17. In the result, I hold that having regard to the nature of duties performed by Sarvashri M. R. Ghose and B. N. Gupta, the demand that they should be placed in grade II of the clerical grade is justified and I answer the first question in the order of reference accordingly.

18. The next question to decide is with effect from which date after 2nd July 1959, Sarvashri M. R. Ghose and B. N. Gupta should be given the benefit of the scale of pay grade II clerks. Both those clerks have been getting a basic pay of Rs. 79/- and Rs. 70/- respectively, from 1st June 1961, and I direct that Shri M. R. Ghose shall be placed at the stage of Rs. 81/- and Shri B. N. Gupta at Rs. 73/- in the clerical grade II viz. Rs. 48-3-57-4-93, with effect from 1st June 1961 and the amounts due to them shall be paid to them on the date this award becomes enforceable.

19. As the union has succeeded partially, I award Rs. 50/- as costs in favour of the union to be paid within a week of the publication of this award in the official gazette.

SALIM M. MERCHANT,  
Presiding Officer,  
Central Government Industrial Tribunal,  
Dhanbad.

[No. 2/225/60-LRI.]

**S.O. 1969.**—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the industrial dispute between the employers in relation to the Lalki Samseria Mica Mine and their workmen.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DHANBAD

REFERENCE No. 6 OF 1961

Employers in relation to the Lalki Samseria Mica Mine

—

AND

their workmen.

**PRESENT:**

Shri Salim M. Merchant, Presiding Officer.

Camp: Bombay dated 4th August 1961.

**APPEARANCES:**

For the employers: Shri R. P. Singh, Welfare Officer.

For the workmen: Shri G. V. Raghavan, Vice-President, Mica Labour Union.

**STATE:** Bihar.

**INDUSTRY:** Mica mining.

#### AWARD

The Government of India, Ministry of Labour and Employment, by Order No. 20/7/60-LRI dated 24th January 1961, made in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), was pleased to refer to me for adjudication the industrial dispute between the parties above named in respect of the subject matters stated in the following schedule to the said order:—

#### SCHEDULE

“Whether the management of Lalki Samseria Mica Mine were justified in terminating the services of Shri Rameshwar Prasad Sinha, Shift incharge? If not, to what relief he is entitled?”

2. The facts giving rise to this dispute may be briefly stated. The dismissed workman, Rameshwar Prasad Sinha, was working as shift in charge in the Lalki Samseria Mica Mine of Messrs. Chatturam Darsanram at Jhumritelaiya, continuously since December 1958. It is admitted that on 5th April 1960 he applied for leave from 11th April 1960 to 7th May 1960 (Employer's exhibit No. 1) on the ground of his own marriage and it is common ground, as endorsed on his application, that he had then 20 days privilege leave and 8 days casual leave due to him and that the manager had endorsed on the application that, as far as he knew, the reason for the application was true and that Sinha may be spared i.e. granted the leave, and accordingly he was granted leave from 11th April 1960 to 7th May 1960. It appears that on reaching his village Shri Sri Sinha found that the date of his marriage had been postponed to 10th May 1960 and on 30th April 1960 he applied for extension of leave upto 14th May 1960. He sent the application to the management by registered post. This application has been produced and is filed as exhibit No. 2 of the employers. Sinha did not hear anything in reply and he therefore presumed that extension of leave had been granted to him uptill 14th May 1960 as applied for by him. Accordingly, he reported himself for duty at the mine on 15th May 1960. According to Sinha he worked in the mine till 17th May 1960 and on 18th May 1960 he was suspended from service on the ground of his having overstayed his leave. The suspension order is contained in the management's letter dated 18th May 1960 (annexure A to the union's written statement) and he was asked to present himself for an enquiry on 20th May 1960. According to Sinha he presented himself for an enquiry but no enquiry was held but instead he was served with an order of dismissal dated 20th May 1960 (annexure B to the union's written statement). Thereafter from his native place, Sinha addressed a letter dated 26th May 1960 to the Labour Commissioner, Dhanbad setting out the above facts and challenging the order of dismissal and asking for his intervention in the matter. A copy of this letter was sent by Sinha to the Managing Director of M/s. Chatturam Darsanram (P) Ltd., as also to the union at its office in Jhumritelaiya "for information and necessary action" (annexure C to the company's written statement). Thereafter, on 30th May 1960 the General Secretary of the Mica Labour Union addressed a letter to the management recording the facts about Sinha's dismissal and asking the management to let him know at an early date how the matter stood (annexure C to the statement of claim). The Mica Labour Union also addressed a letter to the Conciliation Officer recording the facts stated above—and stating that the "discharge of a permanent employee on the baseless allegation is quite unjustified and improper. Hence we demand that he should be reinstated with full wages from the date he has been kept unemployed .." Thereafter, the dispute was taken up in conciliation by the Conciliation Officer (Verification) Dhanbad, who by his letter No. 22(15)/60 dated 4th July 1960 called upon the employers to attend the conciliation proceedings on 29th July 1960 to which the management replied by their letter No. 472/60 dated 15th July 1960 stating that Sinha had been dismissed for overstaying his leave without any authority. In that letter the management objected to the Mica Labour Union representing Sinha's case as Shri Sinha had himself made a representation by his letter dated 26th May 1960. The management also challenged the representative capacity of the union and stated that the management was not prepared to discuss the matter before the Conciliation Officer in the presence of the union but would do so separately.

3. It appears that thereafter both parties, the union and the management, appeared before the Conciliation Officer on 12th August 1960 but they seem to have put their points of view before the Conciliation Officer separately. Both sides adhered to their respective stands with the result that the conciliation ended in failure as recorded in the failure report of the Conciliation Officer, Shri R. B. Mazumdar, dated 18th August 1960 addressed to the Chief Labour Commissioner, New Delhi.

4. On these facts the objection raised in the written statement of the management dated 12th April, 1961, is that this is an individual and not an industrial dispute under section 2(k) of the Industrial Disputes (Act 14 of 1947) and therefore the reference is not valid and this Tribunal has no jurisdiction. I shall deal with this legal objection first, before dealing with the dispute on its merits.

5. It is now well settled, by the decision of the Hon'ble Supreme Court in the case of the Central Provinces Transport Services Ltd., and Raghunath Gopal Patwardhan (1957 1 LLJ p. 27) that, "notwithstanding that the language of section 2(k) of the Industrial Disputes Act is wide enough to cover a dispute between an employer and a single employee the scheme of the Industrial Disputes Act does appear to contemplate that the machinery provided therein should be set in motion to settle only disputes which involve the rights of workmen as a class and not disputes touching the individual rights of a workman was not intended to be the object of an adjudication under the Act, when the same has not been taken up by the union or a number of workmen." The management has in this case

urged that the workmen of its Lalki Samseria Mine have not sponsored the cause of the dismissed workman and that the Mica Labour Union has no membership amongst its workmen and that Sinha was not even a member of the union till the date of his dismissal. When an employer contends that what is referred is an individual dispute and not an industrial dispute it is not for the employer to establish that it is not an industrial dispute. "It is for the workman to show that his cause has been sponsored by his union or by a number of workmen of his class" (Judgment of Justice Sri Bhimasankaran of the Andhra Pradesh High Court reported at 1960 1 LLJ p. 53 Sri Kripa Printing Press and Labour Court and another). Evidence was therefore led before me by the Union on this point. The union examined Sinha the dismissed workman (WW-1) who stated that the workmen of the Lalki Shamsher Mica Mine had formed themselves into a Union known as the Mica Labour Union and that he was a member of that union. In cross-examination he stated that he had joined the union on 31st March, 1961 before the date of his dismissal and that though he did not remember the name of the Vice-President of the Union he knew the other office bearers of the union. On this point, the union also examined Shri Nankurana son of Bhatu Rana, the General Secretary of the Mica Labour Union, (W.W. 2) and he deposed that this union had a membership of 3675 workers of Mica Mines and that its present membership stood at about 4000. He produced a letter dated 14th December, 1960, from the Conciliation Officer (Central) Verification (exhibit W-6) addressed to the President of his union in which he had asked the union to produce before him its membership register. The letter was written on the subject of, "the industrial dispute in Lalki Shamsaria Mica Mine of M/s Chattruram Darsanram regarding alleged discharge of Rameshwar Prasad, a shift-in-charge" stated as follows:—

"I would be visiting Jhumuritelaya on 16th December, 1960. Please arrange to produce the Membership Register of your union showing your membership in the above mine during March to May 1960 before me in the office of the Labour Inspector (Central) Koderma at 13-00 hours on the date."

Shri Nankurana deposed that Shri R. B. Mazumdar, Conciliation Officer (C) (Verification) had visited the union's office and inspected its membership register; that he had made a note of the actual membership from the Lalki Shamsher Mica Mine and also verified the membership of Rameshwar Prasad Sinha noting down his serial number, in the membership register pertaining to the Lalki Shamsher Mica Mine. In cross-examination by the Welfare Officer of the company he stated that there were about 70 to 75 workers of the Lalki Samseria Mica Mine who were members of his union and that the workers of this mica mine were members of this union since the last five years. Questioned about any other earlier industrial dispute having been raised by this union against the Lalki Samseria Mica Mine, witness stated that a dispute had been raised in 1959 by his union in respect of a compressor khalasi.

6. On this evidence, I am satisfied that Sinha was a member of the Mica Labour Union prior to his dismissal and that this union has a membership of about 70 to 75 workers of this mine (Lalki Samseria) and that the union as representing the workmen of this mine has espoused the cause of Sinha and raised an industrial dispute with regard to his dismissal. It is clear that the management having challenged before the Conciliation Officer the Mica Labour Union's representative capacity, Shri Mazumdar the Conciliation Officer (Central) (Verification), satisfied himself as to the union's claim to represent the workmen of the Lalki Shamsher Mica Mine and to sponsor the cause of Sinha, and for that purpose he visited the office of the mine and examined the membership registers and that it was only after he was satisfied that this union did represent a substantial number of workmen of this mine and that Sinha was a member of this union that Government made this reference. Shri R. P. Singh the Welfare Officer of the Mine has relied heavily upon Sinha's letter dated 26th May, 1960, addressed by him to the Labour Commissioner, Dhanbad, and he has argued on the strength of that letter that Sinha was not a member of the Union, at the date of his dismissal, as if he had been a member of the Union, the Union would have addressed the first letter and not Sinha. But it is significant to note that that letter was written by Sinha from his native place and that he had forwarded a copy of that letter to the Mica Labour Union which would show that he was a member of the union, by that date, otherwise it is difficult to understand why he had addressed a copy of his letter to the union. It is also pertinent to note that upon receipt of that letter the union almost immediately addressed letters to the management and the Conciliation Officer. On the facts and circumstances of this case and from the correspondence and oral and documentary evidence on record, I am satisfied that the case of the dismissed workman Shri Rameshwar Prasad Sinha has been sponsored by the Mica Labour Union and that Sinha was member of that union which has a substantial membership from amongst the workmen of the Lalki Samseria

Mica Mine. I, therefore, hold that this is not an individual dispute but is an industrial dispute as defined by Sec. 2(k) of the Industrial Disputes Act, and that this reference is valid and legal and I have jurisdiction to entertain it.

7. Shri Singh, the Welfare Officer of the employers, has relied upon the judgment of the Madras High Court in the case of the Pandan Textiles Ltd., and Industrial Tribunal (Madras) reported in 1949 II LLJ p. 739. But this case was discussed by the Hon'ble Supreme Court in the C.P. & Berar Transport Co.'s case, referred to earlier, and the same was not approved by it. Shri Sinha has next relied upon the case of the Punjab and Sind Bank Ltd., and Rameshwar Dayal and others (1958 II LLJ p. 107). In that case it was held that in the absence of any evidence to show that the cause of the dismissed workman was taken up by the workmen, the reference of such dispute must be held to be bad and that such a dispute in the circumstances would not be an 'industrial dispute' within the meaning of section 2(k) of the Industrial Disputes Act. But as I have stated earlier in this case there is satisfactory evidence on record to show that a registered Trade Union of the workmen of this Mine had taken up the cause of the dismissed workman. Shri Singh, has next relied upon the decision of the Industrial Tribunal, West Bengal, in the case of the Krudd Industries Ltd., and Shivapada Das (Krudd Industries Workers' Union) (1958 I LLJ p. 181). That case, can easily be distinguished on facts from the instant case, because in that case the authority from the dismissed workmen to a particular union was only to represent it in certain proceedings and the learned Industrial Tribunal also held that after the order of reference was made, the union had attempted to transform what was an individual dispute into a real collective dispute. The facts of this case as stated earlier are quite different and as I have pointed out the Mica Labour Union had sponsored his cause even in the conciliation proceedings. This brings me to the question whether the dismissal of Rameshwar Prasad Sinha was justified on the merits.

8. From the facts narrated earlier, it is clear that the dismissed workman Sinha was a permanent employee of the Mine and that when he applied for leave from 11th April, 1960 to 7th May, 1960, he had 20 days privilege leave and 8 days casual leave due to him. It is also clear that the reason why he was on leave, as stated by him in his application and as acknowledged to be true by the endorsement made by the Manager on the said application, was Sinha's own marriage. On reaching his native place and on finding that the marriage date has been postponed to 10th May, 1960, Sinha by a registered letter dated 29th April, 1960, applied for extension of leave until 14th May, 1960, and the management admits receipt of this letter. The management's case is that it had then replied to Sinha extending the leave only upto the 11th May and not till the 14th as applied for by him. The management states that this letter was sent under certificate of posting but Sinha has throughout denied the receipt of any such letter. The management was not able to produce the certificate of posting before the Conciliation Officer nor did it produce it at the hearing before me. The management has led no evidence whatsoever that it had written a letter to Sinha that his leave had been extended only until the 11th May 1960 and not upto the 14th May as applied for by him. The management has thus failed to establish that it had written any such letter to Sinha in reply to his application dated 29th April, 1960, asking for extension of leave. The position therefore is that Sinha after he had made his application dated 29th April, 1960, from his native place for extension of leave until 14th May, 1960, had no reason to believe that that leave had been refused or that he had been asked to report himself for duty on 12th May.

9. Sinha's case is that he had reported himself for duty on the 15th May. He has specifically stated so in paragraphs 1 and 5 of his letter dated 26th May, 1960, addressed to the Labour Commissioner, Dhanbad with copy to the management and others, and the management has not specifically denied this allegation. Sinha has in his evidence before me also stated that he reported himself for duty on 15th May. What he stated was—

"I reported myself for duty on 15th May, 1960, and I was allowed to work for two days".

There has been no cross-examination on this point nor has the management led any evidence to show that he had reported himself for duty only on the 17th of May as alleged by it. I am, therefore, satisfied on the evidence that Sinha had reported himself for duty on 15th May, 1960 and not on 17th May, 1960, as alleged by the management.

10. I am also satisfied that there is force in the union's contention that the dismissal was illegal and improper because no departmental enquiry was held before Sinha was dismissed from service. The management by its letter dated 18th May, 1960, suspended Sinha pending an enquiry to be held on 20th May, 1960.

Sinha has in his evidence before me, and also in his letter of 26th May, 1960, clearly stated that he had been dismissed without any proper enquiry or any procedure. He has also stated that on 20th May, 1960, he had presented himself for the enquiry at the head office but that no enquiry was held but instead he was served with the order of dismissal dated 20th May, 1960.

11. It is clear to me from the facts stated above that there has been a violation of the principles of natural justice as no enquiry was held and Sinha was denied the opportunity to defend himself against the charge of the misconduct of having over-stayed his sanctioned leave which had been levelled against him. The Union in its written statement of claim dated 22nd March, 1961, in para 7 has specifically stated that "the management while passing the order of discharge have not followed the principle of natural justice in as much no proper enquiry was held." There is no denial of this averment in the company's written statement nor did the management at the hearing adduce any oral or documentary evidence, to establish that any enquiry at all was held. Surely, if an enquiry was held the record of the enquiry and the report of the enquiry officer would have been produced at the hearing. It is no doubt true that the management is the best judge to decide what should be the proper punishment for a misconduct, but in this case the misconduct itself was denied and the workman was not given a chance to defend himself at any departmental enquiry. In the circumstances, the punishment appears to me to be indicative of unfair labour practice, and would justify interference by the Tribunal (See judgment of the Hon'ble Supreme Court in the case of the Indian Iron & Co Ltd., and their workmen 1958 1 IJ 260).

12. In the overall result, I hold that the management of Lalki Samser's Mica Mine was not justified in terminating the services of Ramshwar Prasad Sinha, Shift-in-charge.

13. The next question to consider is what relief he should be granted. Normally when the Tribunal holds that the termination of service of a workman is not justified the order that should follow is one of reinstatement and I do not see any reason why reinstatement should not be directed in this case. I, therefore, direct that the management shall reinstate Shri Ramshwar Prasad Sinha in its service in his former post of Shift-in-charge on the same terms and conditions for reinstatement within 15 days of the publication of this award in the official gazette with continuity of service. I further direct that the management shall pay Ramshwar Prasad Sinha half his wages for the period from 18th May, 1960 the date of his suspension till the date he is reinstated in service. The wages to be calculated on the basis of the rates of wages to which he was entitled in March 1960.

14. Since the union has succeeded, I award Rs. 100 as costs to be paid by the employers to the union within a week of this award becoming enforceable.

(Sd.) SALIM M. MERCHANT,

Presiding Officer,

Central Government Industrial Tribunal, Dhanbad.

[No. 20/7/60-LRII.]

## ORDERS

*New Delhi, the 9th August 1961*

**S.O. 1970.**—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Chaitodih Colliery and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

## SCHEDULE

Whether the dismissal of Shri Purushottam Dubey, Underground Munshi, is justified and if not, to what relief the workman is entitled?

[No. 2/43/61-LRII.]

*New Delhi, the 10th August 1961*

**S.O. 1971.**—Whereas the Central Government is of opinion at an industrial dispute exists between the employers in relation to the Digwadih Colliery and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

#### SCHEDULE

Whether the dismissal of Shri Ganesh Mahato by the management of Digwadih Colliery was justified and if not, to what relief he is entitled?

[No. 2/158/61-LRII.]

A. L. HANDA, Under Secy.

*New Delhi, the 9th August 1961*

**S.O. 1972.**—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Bombay in the industrial dispute between the employers in relation to Messrs Ardeshir B. Cursetjee and Sons Private Limited, Bombay, and their workmen.

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, BOMBAY**

REFERENCE No. CGIT-21 of 1961

Employers in relation to Messrs. Ardeshir B. Cursetjee & Sons Private Ltd.,  
Bombay

AND

Their workmen

**PRESENT:**

Shri Salim M Merchant, Presiding Officer

**APPEARANCES:**

*For the employers:* Shri M. A. Latif, Enquiring Officer with Shri J. K. Desai, Staff Officer of Messrs. A.B. Cursetjee and Sons (P) Ltd.

*For the workmen:* Shri S. R. Kulkarni, Secretary, Transport and Dock Workers' Union, Bombay.

**STATE:** Maharashtra

**INDUSTRY:** Stevedoring

*Bombay, the 31st July 1961*

#### AWARD

The Government of India, Ministry of Labour and Employment, by order No. 2813/61-LRIV, dated 8th June 1961, made in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947) was pleased to refer the industrial dispute between the parties above-named in respect of the subject matter specified in the following schedule to the said order, to me for adjudication:—

#### SCHEDULE

"Whether the suspension of Shri V. P. D'Souza from work for the period from 26th March to 24th April 1961 is justified and if not to what relief he is entitled."

2. After notices were issued on the parties for filing their written statements, the Secretary of the Transport and Dock Workers' Union, Bombay intimated by his letter, dated 18th July 1961 that the dispute had been settled between the parties and accordingly the parties were by notice required to appear before the



Tribunal today for recording the terms of settlement reached between them. The representatives of the parties appeared before me today and recorded that the management have withdrawn the suspension order dated 8th March 1961 against Shri V. P. D'Souza suspending him from service for one month from 26th March to 24th April 1961. Since the suspension order dated 8th March 1961 which forms the subject matter of this dispute has been withdrawn, the dispute does not survive and is disposed of as such.

No order as to costs.

SALIM M. MERCHANT,  
Presiding Officer,  
Central Government Industrial Tribunal, Bombay.

[No. 26/13/61/LR-IV]

*New Delhi, the 14th August 1961*

**S.O. 1973.**—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Madras, in the industrial dispute between the employers in relation to the Punjab National Bank Limited and their workmen.

#### BEFORE THE INDUSTRIAL TRIBUNAL, MADRAS

*Friday, the twenty-eighth day of July, One thousand nine hundred and sixty-one.  
(6th day of Sravana, 1883—Saka).*

#### PRESENT:

Sri K. RAMASWAMI GOUNDAR, B.A., M.L.

INDUSTRIAL DISPUTE No. 22 OF 1961

(In the matter of the dispute between the workmen and the employers of the Punjab National Bank, Limited)

#### BETWEEN:

The Punjab National Bank Staff Union, 11, Maclean Street, Madras-1.

#### AND

The Staff Managers, Punjab National Bank Ltd., Staff Department, P.B. No. 274, Parliament Street, New Delhi-1.

**REFERENCE.**—No. 10(145)/60-LRIV dated 1st July 1961, Government of India, Ministry of Labour and Employment, New Delhi.

**ISSUE:**—Whether in view of the duties performed and responsibilities held by Shri Balakrishna Mudaliar since 1st April, 1954 in the Punjab National Bank Limited, Madras, he is entitled to a special allowance of Rs. 50/- per month prescribed for supervisors in paragraph 164(b) of the Award of the All India Industrial Tribunal Bank Disputes, Bombay as modified by the decision of the Labour Appellate Tribunal in the manner referred to in section 3 of the Industrial Disputes (Banking Companies) Decision Act, 1955 (41 of 1955).

This dispute coming on for hearing this day, upon perusing the reference, the claim and counter statements and other material papers connected therewith, and upon hearing the arguments of Sri S. Somasundaram, Secretary, The Punjab National Bank Staff Union, Madras, and Sri T. N. K. Nayar, Manager, The Punjab National Bank Ltd., Madras, the Tribunal passed the following

#### AWARD

This is a reference made by the Government of India for the adjudication of a dispute between the Punjab National Bank Ltd., Madras on the one hand and one of its employees by name Sri Balakrishna Mudaliar on the other. The dispute is whether in view of the duties performed and responsibilities held by the said employee since 1st April 1954, he is entitled to a special allowance of Rs. 50/- per month prescribed in paragraph 164(b) of the award of the All India Industrial Tribunal Bank Disputes, as modified by the decision of the Labour Appellate Tribunal in the manner referred to in Sec. 3 of Act XLI of 1955. Sri Mudaliar entered the services of the Bank in April 1945 as the Treasurer at the Madras branch of the Bank at Broadway and any other branch to be opened in the Madras City.

The terms and conditions of his employment were embodied in an agreement Ex. M-1 dated 2nd April 1945. Under that agreement he was to be paid a certain remuneration for his services as well as those of his nominees, whom he shall have to employ in the Cash Department of the said branches at his own risk and responsibility. It is unnecessary to refer to the terms of that agreement, because it was superseded by a second agreement Ex. M-2 dated 9th June 1947, embodying all the terms of the earlier agreement and certain other additional terms and conditions. When the terms of that agreement are perused, it will be clear that it represents what may be called a "Treasurer system" or "Cashier-contractor system", by which the employee appointed as Treasurer held himself responsible not only for his own acts of default or misconduct, but also stood guarantee for such default or misconduct on the part of his assistants in the Cash Department, whom he was empowered to appoint and for whom also he offered cash security. This system was superseded by the Bank in June 1960, as appears in its proposals embodied in its letter Ex. W-1. In his reply Ex. W-2, the employee had no objection to the replacement of the "Treasurer system" and to retain his services in the Bank as a Head Cashier answerable only for himself and not for the other employees in the Cash Department. Embodying the terms of the new agreement by which Sri Mudaliar became Head Cashier simpliciter, an agreement Ex. W-3 came to be executed on the 21st June 1960 which, however, came into effect on 1st October 1960. In other words, the "Treasurer system" which was introduced under the agreement of June 1947 was in force till 30th September 1960, till which date Sri Mudaliar was holding office as a Treasurer under the terms and conditions of that agreement.

2. Whilst so, the award of the All India Industrial Tribunal (Bank Disputes), commonly called the Saxstry Award, was passed in March 1953, which underwent certain modifications before the Labour Appellate Tribunal, and by the Industrial Disputes (Banking Companies) Decision Act XLI of 1955.

3. That award was given effect to from 1st April 1954. It will be seen from that award that under Chapter X it deals with special allowances for some categories of bank employees—vide paragraph 164. It will be seen that for Head Cashiers with units of 4 clerks and below, in the case of 'A' class Banks, a special allowance of Rs. 15/- is prescribed. It is admitted that that special allowance has since been paid to this employee from 1st April 1954 to 30th September 1960. The present claim is that Sri Mudaliar was not a mere Head Cashier but a Treasurer-in-charge and therefore entitled to an allowance of Rs. 50 under item 9 of paragraph 164(b) of the said Award and not Rs. 15/- as for Head Cashier under item 4. The present dispute, therefore, relates to the balance of Rs. 35/- for the period from 1st April 1954 to 30th September 1960, that is, for 78 months at Rs. 35/- a month.

4. It will be seen from the said paragraph of the Award that allowance of Rs. 50/- is prescribed for Supervisors, Superintendents, Sub-Accountants, departmental-in-charges and employees in charge of treasury pay offices. It is claimed that Sri Mudaliar is a "departmental-in-charge" under the terms of the agreement Ex. M-2 of June 1947. It becomes necessary to examine those terms and the conditions of service. Before we do so, it will be necessary to know what a "departmental-in-charge" means. On that, paragraph 338 of the Award gives this definition:

"..... The expression "department-in-charges" does not appear to be a technical one in banking practice. We understand that this designation is not in vogue as such in the banks. It must therefore be taken as merely denoting a person who is in charge of any department of banking activity ....."

It will, therefore, be seen from that definition that before he could claim this higher rate of special allowance, he must be a person in charge of any department of the Bank. I should think that "in-charge" necessarily means complete or full charge and not partial or limited charge; for, even a Cashier or Assistant Cashier is "in-charge" of the Cash Department to a limited extent. But it is not claimed that those employees also would be "departmental-in-charge". We have therefore to examine the terms of the agreement Ex. M-2 and ascertain whether having regard to the nature of the duties, the rights, and the responsibilities placed on this employee, he should be regarded to be a departmental-in-charge, that is to say, in full or complete charge of the Cash Department.

5. In the first place, the agreement states that the Bank has agreed to take Mr. Mudaliar into service merely "as Treasurer". Paragraph 3, relating to the

appointment, declares that the Treasurer is hereby appointed as Treasurer in charge of the Cash Department of the various branches of the Bank as per Schedule A attached to the agreement. Under that Schedule, 4 branches are mentioned, namely Broadway (now Armenian Street), Sowcarpet, Vellore and Tiruchirappalli. Subsequently, the branches at Vellore and Tiruchirappalli ceased to function, and Sri Mudaliar was in charge only of the city branches at Broadway and Sowcarpet. Paragraph 4 fixes his remuneration and allowances as detailed in Schedule B to the agreement. Paragraphs 5 to 16 set out in great detail his duties, liabilities and responsibilities. But, on examination, it will be seen that they are all duties and liabilities devolving on any Treasurer or Head-Cashier, incidental to his handling cash, securities, bills etc., of the Bank. It is difficult to say from those duties and responsibilities that this employee was the Head of the Cash Department or what is called departmental-in-charge. Paragraph 17 of the agreement refers to certain special duties which the Treasurer may be called upon to perform and for which he was to be paid separate remuneration. The special feature of this agreement, on which great emphasis is placed on behalf of the employee, is paragraph 18 relating to the appointment of nominees and assistants, which empowers the Treasurer to appoint assistants or substitutes for whose act and default he was to be responsible. The Treasurer was also to deposit a sum of Rs. 45,000/- as security for any loss which the bank may sustain by reason of the negligence, inadvertence, fraud, etc., of the Treasurer or any of his employees. It may be that the burden of his duties and liabilities was heavy. But that alone cannot furnish the test for determining whether he was departmental-in-charge. I am not satisfied that the terms of the agreement are sufficient to show that the Treasurer was placed in full and complete charge of the Cash department, or that he regulated and controlled the entire Cash department as alleged in the claim statement. But it was contended that the special allowance of Rs. 15/- which has been paid by the bank under the award is the allowance payable to a Head Cashier, and the Head Cashier has no such obligations as aforesaid as regards the appointment of the assistants or nominees and standing guarantee also for their default or misconduct. It was also pointed out that a Head Cashier gives security in a sum of Rs. 2,000/- whereas the Treasurer had, to give security in a huge sum of Rs. 45,000/-. It may be that the duties and responsibilities of a Treasurer, as we find them detailed in the agreement, are more onerous than those ordinarily placed on a Head Cashier. But, then, for such additional duties and responsibilities the agreement itself provides sufficient recompense, for paragraph 4 fixes a gross remuneration of Rs. 1,038/- a month both for the Treasurer as well as his assistants and states that such gross remuneration shall consist of and include his own remuneration for working himself, for covering the risk involved, for guaranteeing the fidelity of the men employed by him, and remuneration for giving relieving hands in leave arrangements. Therefore, the fact that he undertook much more onerous burden than a Head Cashier would lose much of its force, because that has been compensated in the remuneration. On an examination of the terms of the agreement, I am not convinced that he was placed in complete charge or control of the Cash department, that is to say a departmental-in-charge. His rights, duties and responsibilities as a Treasurer were defined in precise terms. He functioned within those limits. For the additional burden which he undertook in respect of his assistants or nominees, he was compensated by adequate remuneration. In addition, as the agreement Ex. M-2 shows, for the Sowcarpet branch, as Cashier contractor, he was paid a risk allowance of Rs. 40/- a month, more than the difference of Rs. 35/- now claimed. To allow the present claim will mean a double payment for the same risk.

6. In July 1957, Sri Mudaliar addressed a letter Ex. W-6 to the Bank in regard to the fixation of his salary and increments. By a reply Ex. W-7, the Bank wanted his consent to abide by the Bank's scale and service condition in respect of officer's staff. Sri Mudaliar, by letter Ex. W-8, agreed to abide by rules as applicable to officers. Accordingly, by Ex. W-9 the Bank fixed his salary as an officer of the II Grade at Rs. 205/- while he had been drawing Rs. 250/- for quite a long time. Naturally he protested against this fixation and preferred to be classified as a workman, and accordingly he got his scale of wages fixed at Rs. 280/-. Some argument was built upon this correspondence as showing that the Bank treated this employee as an officer. But there is nothing to show that because as a Treasurer this employee was considered to be a departmental-in-charge, the Bank agreed to treat him as an officer. They agreed to treat him as an officer of the II Grade for purposes of the fixation of his salary. That resulted in a great disadvantage to the employee, who preferred to be treated as a workman, and he was accordingly treated for the fixation of his salary.

7. The answer to this reference must be in the negative and against the employee, and there will be an award accordingly.

(Sd.) K. RAMASWAMI GOUNDAR,  
Industrial Tribunal  
[No. 10(145)/60-LR IV.]

**S.O. 1974.**—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Labour Court, Delhi, in the matter of an application under section 33A of the said Act from Shri Nagindas Soni, ex-employee of the Hindustan Commercial Bank Ltd., Kanpur.

BEFORE THE PRESIDING OFFICER, CENTRAL GOVT. LABOUR COURT,  
DELHI

PRESENT:

Shri E. Krishna Murti, Central Government Labour Court at Delhi.

*The 25th July, 1961.*

Application U/S. 33A, of the Industrial Disputes Act, 1947.

I. D. No. 158 of 1961.

Shri Nagindas O. Soni, 25 Nandan Society, Shahpur Mill Compound, Ahmedabad.—*Complainant.*

*Vs.*

The Hindustan Commercial Bank Ltd., H. O. Kanpur, (U. P.).—*Respondent.*  
Shri Onkar Nath *for the management.*

Shri Nagindas O. Soni workman with Shri Manu Bhai B. Shah.

In the matter of Ref. No. 1 of 1960, pending before the National Industrial Tribunal (Bank Disputes) Bombay-1.

#### AWARD

This is a petition under Section 33A of the Industrial Disputes Act.

2. The petitioner alleges, that the proceedings in respect of reference No. 1 of 1960, are pending before the National Tribunal since 21st March, 1960, that the opposite party has been guilty of contravention of the provisions of Section 33 during the pendency of the said reference, that the petitioner was working at the Bank's Astodia Branch, that his wages did not exceed Rs. 360, that he is a workman as defined in the Act, that he is concerned in the industrial dispute pending before the National Tribunal, that he was dismissed for alleged misconduct by order dated 8th February, 1961 that the Bank did not file any application for approval of the action of dismissal, that the said dismissal is improper and illegal, and that accordingly the complainant should be reinstated in service together with back pay.

3. The contention on behalf of the management is, that there is no contravention of Section 33 of the Act, that this petition, as brought, is not maintainable, that the petitioner is not a workman within the meaning of the Industrial Disputes Act, that he is not concerned in the industrial dispute pending before the National Tribunal, that it is true, that he was dismissed by order dated 8th February, 1961, that there was no need to make any application for approval to the Tribunal, and no need to pay one month's wages, that the order of dismissal is perfectly proper, that the petitioner was the principal officer, the administrative head, and in full charge of the Bank, exercising full powers of a managerial and administrative nature, that accordingly he is not a workman, that the dismissal is proper, and that the workman is not entitled to any relief.

4. The issues, that arise for determination, are:—

- (1) Whether the petition, as brought, is maintainable?
- (2) Whether there is a contravention of Section 33 of the Industrial Disputes Act?
- (3) Whether the petitioner is a workman, as defined in Section 2 (s) of the Industrial Disputes Act?

- (4) Whether the petitioner is concerned in the reference before the National Tribunal?
- (5) Whether the dismissal of the workman is wrongful, as contended on his behalf?
- (6) Whether the petitioner is entitled to re-instatement, and back wages, as claimed?
- (7) To what relief, if any, is the petitioner entitled?

**Issues No. 1—4.**

5. This is a petition preferred under Section 33A of the Industrial Disputes Act by Shri Nagindas O. Soni, who was formerly an employee of the Hindustan Commercial Bank Limited, Kanpur.

6. According to the complaint of the petitioner, he was an employee of the Bank, and was last working at the Bank's Astodia Branch. He was served with a charge-sheet, copy of which is Ext. M/4, dated 12th November, 1960. He was accused of mis-conduct, and various irregularities, as pointed out therein. Ext. M/5, is the explanation of the workman dated 21st November, 1960. It is contended on behalf of the Bank, that in paragraph 2, the petitioner stated as follows:—

"What follows is not an effort to justify my actions but is an attempt to exonerate me from contemplated and expressed charges in your letter, because while I cannot and do not want to deny the facts submitted by the Internal Auditor. I want to take this opportunity to show you that my actions were *bona-fide* and only from the point of view of developing the branch's business".

The case of the Bank is, that, after enquiry, the petitioner was ordered to be dismissed from service. Ext. M/36, is the letter dated 12th October, 1960, sent on behalf of the Bank to the petitioner, calling upon him to explain certain remarks made by the Auditors. The Auditors' reports are Exts. M/34, 35, and 35A, which have been admitted to be genuine in the evidence of the petitioner. In Exts. M/37 and 38 the petitioner wanted time for explanation. Ultimately, the charge-sheet, above referred to, was issued against him. Ext. M/39, is a letter dated 8th February, 1961, wherein it was written, that the Board of Directors had considered the charge-sheet and the explanation, that the explanation was not considered to be satisfactory, and that the Board had decided to dismiss him from the service of the Bank. The petitioner was informed, that he should treat himself to have been dismissed from service of the Bank with effect from date Ext. M/1, is a letter dated 18th February, 1961, in which the petitioner appealed for mercy to the Board of Directors. It is mentioned at page 5 as follows:—

"Your most humble petitioner therefore begs for mercy, and mercy alone, and nothing more and nothing less".

Having failed to get redress from the Bank, the petitioner has filed the present petition under Section 33A, complaining against the order of dismissal.

7. At the outset, the preliminary objection has been taken on behalf of the Bank, that this petition, as brought, is not maintainable, and that this Court has no jurisdiction to proceed with the same. It is urged, that there is no contravention of Section 33, of the Industrial Disputes Act, and that, therefore, the petition is not entertainable. Even from the opening words of Section 33A, it is clear, that an application thereunder will lie only when there is a contravention of Section 33. In the decision in *Equitable Coal Ltd., Vs. Algu Singh* and another (1958 1 LLJ 793), it was laid down by the Supreme Court at page 795 as follows:—

"If the employer contravenes the provisions of S. 22, the employee is entitled to make a complaint in writing in the prescribed manner to the Appellate Tribunal and, on receiving such complaint, the Appellate Tribunal has to decide the complaint as if it is an appeal pending before it. The breach of the provisions of S. 22 by the employer is in a sense condition precedent for the exercise of the jurisdiction conferred on the Labour Appellate Tribunal by S. 23. As soon as this condition precedent is satisfied, the employee is given an additional right of making the employer's conduct the subject-matter of an industrial dispute without having to follow the normal procedure laid down in the Industrial Disputes Act. In an enquiry held under S.23, two questions fall to be considered: Is the fact of contravention

by the employer of the provisions of S.22 proved? If yes, is the order passed by the employer against the employee justified on the merits? If both these questions are answered in favour of the employee, the Appellate Tribunal would no doubt be entitled to pass an appropriate order in favour of the employee. If the first point is answered in favour of the employee, but on the second point the finding is, that, on the merits, the order passed by the employer against the employee is justified, then the breach of S.22 proved against the employer may ordinarily be regarded as a technical breach, and it may not, unless there are compelling facts, in favour of the employee, justify any substantial order of compensation in favour of the employee. It is unnecessary to add that, if the first issue is answered against the employee, nothing further can be done under S.23."

In the decision in *Central Bank of India* (1959 I LLJ 446), it is observed as follows at page 449:—

"Since the provisions of Section 22 did not apply, the petition filed by the respondent under Section 23 was mis-conceived, and the Tribunal had no jurisdiction to entertain it."

Both the above mentioned cases arose with reference to Sections 22 and 23 of the Industrial Dispute (Appellate Tribunal) Act, but the same principles apply while considering Sections 33 and 33A of the Industrial Disputes Act. Therefore, unless the contravention of Section 33 is proved, the present petition will not be maintainable, and this Court will have no jurisdiction to entertain the same.

8. The point, therefore, for determination is, whether there is a contravention of Section 33. It is alleged in paragraph 5 of the petition, that the petitioner had not been paid, nor offered one month's wages at the time of dismissal, nor had an application been made by the opposite party to the National Tribunal for approval of the action of dismissal. Shri Daru, the learned Advocate for the petitioner contended, that there is a contravention of Section 33(2)(b) of the Industrial Disputes Act. In other words, it is urged before me, that the contravention consisted in the fact, that the Bank did not apply for or obtain approval of the action of dismissal under Section 33(2)(b), nor pay the petitioner one month's wages.

9. The contention on behalf of the Bank is two-fold (i) that Section 33 has no application to the facts of the case, because the petitioner is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, and (ii) in any case he is not a workman concerned in the dispute before the National Tribunal, even granting, without admitting, that he was a workman.

10. Taking the last contention first, if it is assumed, for the sake of argument, without admitting, that the petitioner is a workman within the meaning of Section 2(s) of the Industrial Disputes Act, I am not prepared to uphold the contention on behalf of the Bank, that he is not a workman concerned in the said dispute. Such a contention is opposed to the principles laid down, by the Supreme Court in *New India Motors Vs. K. T. Morris* (1960 I LLJ 551).

11. Taking the first contention raised on behalf of the Bank, about the status of the petitioner it is clear, that this goes to the root of the matter, and, if he is not a workman, as defined in Section 2(s) of the Act, then the Bank was not under any obligation to file a petition under Section 33(2)(b). In that view, there would be no contravention of Section 33, and this petition would not be maintainable.

12. The point, that arises for determination, therefore, is, whether the petitioner is a workman within the meaning of Section 2(s) of the Industrial Disputes Act. The petitioner alleges that, in view of the nature of his work and salary, he was a workman as defined in the Act. It is asserted, that his total monthly salary did not exceed Rs. 360. In paragraph 3 of the petition it is stated, that the petitioner was employed by the opposite party as an officer, and was working at the Bank's Astodia Branch, Ahmedabad. In paragraph 7 it is alleged, that the petitioner's duties included (i) typing 4 or 5 letters every day, (ii) verifying the signatures on about 300 cheques, (iii) checking the figures in the ledger, (iv) writing and signing demand drafts, (v) taking decisions of a limited character in respect of advancing loans on securities, and sanctioning over drafts, and (vi) supervising the work of about half a dozen employees, employed in the Astodia Branch of the Bank.

13. It has been contended on his behalf by Shri Daru, that at best it can be contended, that the petitioner was discharging duties of a supervisory nature, that

however his emoluments did not exceed Rs. 500, and that, in these circumstances, he is a workman within the meaning of Section 2(s) of the Act.

14. The contention on behalf of the Bank is, that the petitioner was exercising duties of a managerial and administrative nature, that he was the Agent of the Astodia Branch, and that he is not a workman, as defined in the Industrial Disputes Act.

The witness has examined himself as WW1, and a number of documents have been filed on behalf of the Bank. Though these were produced for some unexplained reason after the evidence of WW1 had been recorded, still the truth and genuineness of all the documents produced on behalf of the management, except Exts. M/14 and 32, have been admitted. The objection was however taken, that some documents required explanation. Thereupon opportunity was given to the petitioner to explain the documents, and he was re-called and examined. In his evidence, he has given some explanations with reference to Exts. M/29, 32, and 35. The documents have been relied upon for the purpose of proving the duties, that were being discharged by the petitioner. From the evidence, I have no doubt at all, that the petitioner is not a workman, and that he was exercising duties of a managerial and administrative nature. It is important to note, that he was the Agent of the Astodia Branch. He was the principal officer of the Bank at Astodia. Ext. M/61 is the Compendium of Instructions, issued by the Bank and at page 21 it is mentioned, that at a Branch, the first in order of importance comes the Manager or Agent, who is directly responsible to the Head Office for efficient management of the branch both internally and externally, and internally his duties are more or less of a supervisory character. He is responsible for maintenance of discipline in the Office.

16. According to the evidence of WW1, his duties were, to pass cash payments and cheques, release vouchers, compare signatures on 300 cheques, and write bodies of demand drafts, and compare the figures in the ledger with the small books. He was doing typing work also, as there was no typist in the branch. He was typing 4 or 5 letters. There were 12 members of the staff working in the branch. Shri R. N. Modi was the Head Clerk. Sarvashri A. C. Bhagat, M. G. Patel, M. V. Shah, and G. P. Ringwala were the clerks. Shri Chokshi was the Cashier. Shri Soni was Godown-Keeper-cum-Cashier. Shri Augustus John and three others were members of the subordinate staff. He admits Ext. M/2, the salary register. Likewise, we have Exts. M/17-28 which are salary bills for the branch signed by the Agent. There is no doubt, that he was supervising the work of all these employees of the branch.

17. The petitioner makes it clear, in his evidence, that there was no-one above him in the branch. The petitioner deposes that his second man was Shri R. L. Modi, and that between them they could pass cheques for any indefinite payment. The petitioner says, that as Agent, he had the power to pass final orders for payment of cheques.

18. As Agent, the petitioner was sanctioning opening of new accounts.

19. He was incharge of cash and other valuables of the branch.

20. He held the power of attorney of the branch, i.e. Ext. M/3.

21. He had discretionary power in respect of over drafts and he had discretion to allow temporary over-drafts to one party upto Rs. 1,00,00, but the total was not to exceed Rs. 50,000-00.

22. He had discretion to advance on clean hundies to one individual upto Rs. 10,000-00.

23. He had discretion to advance on documentary bills to one party upto Rs. 10,000-00, but not exceeding Rs. 50,000-00.

24. Against gold ornaments, he could advance to one party upto Rs. 5,000-00.

25. Against the DDs of banks and Government cheques, he could advance to one party upto Rs. 10,000-00. Some registers containing the entries about advances made at the discretion of the petitioner, have been produced as Exts. M/62-65. It is not necessary to refer to them in greater detail. Again, it has been pointed out on behalf of the Bank, that he was appointing the staff, and that he was taking disciplinary action against them. The petitioner says, that the appointment letters were signed by him, but the Head Office was selecting the candidates. It is however proved, that the letters of appointment were issued under his signatures. Ext. M/29 is a letter of appointment, signed by the Agent dated 15th June, 1959. With reference to disciplinary action Ext. M/30 has been produced on behalf of

the Bank. It is also clear, that the petitioner was sanctioning leave to the members of the staff. This is clear from the leave applications, Exts. M/8-16.

26. It is also proved, that he was sanctioning payment of over-time allowance, and officiating allowance also to the staff. With reference to overtime allowance, the documents Exts. M/23-27 are material. Ext. M/28 deals with officiating allowance. They show, that the allowance in question was paid under orders of the Agent. The evidence of the petitioner, however, is, that he used to apply for prior sanction of the Head Office before taking overtime work. The fact remains, that he was taking over-time work from employees, and was making payment to them for such overtime work. It has also been proved, that he was paying officiating allowance.

27. From the evidence, referred to above, it is clear, that the petitioner is not a workman, within the meaning of Section 2(s) of the Industrial Disputes Act. He is governed by the exemption in Section 2(s)(iii). He was employed mainly in a managerial and administrative capacity. His evidence, that he was doing clerical-cum-supervisory duties, is not entitled to weight. Even a person employed in managerial and administrative duties is sometimes obliged to write a few letters, or type them. That does not make him any the less a person engaged in managerial and administrative duties. The petitioner was the Agent of the Bank, and he was in sole charge and custody of the branch. He was the principal officer, manager, and administrative head of the Astodia Branch of the Bank. He was the incumbent incharge of the Bank. He had powers of command and direction. It was within his discretion to accept deposits and sanction loans. It was he who passed final orders for payment. He had the powers to sanction payment of advances. He could commit the Bank in view of the power of attorney, that was granted to him. He was controlling and directing the affairs of the branch. He was exclusively in a managerial and administrative capacity, and was in independent charge of the branch.

28. Taking all circumstances into consideration, I find, that the petitioner was exercising powers of a directional and controlling nature, that his duties were mainly managerial and administrative, that, as incumbent incharge, he was in independent charge of the branch at Astodia, and that he is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act.

29. Another argument, that has been put forward on behalf of the Bank is, that the petitioner cannot be heard to say, that he is a workman in view of Ext. M/32. Ext. M/32 is a letter dated 6th December, 1952. Therein the petitioner prayed, for promotion, and stated, that, if he was promoted to the officers grade, he waived all his rights of a workman, and that he would be governed by the scales for officers. Ext. M/33 dated 13th February, 1953, is produced as the office copy of the letter, that was sent to the petitioner by the Bank. It is mentioned therein, that as he agreed to forego all his rights and privileges as a workman, the Directors were pleased to appoint him as an officer with effect from 1st January, 1959. It is expressly stated therein that he would be governed by rules and regulations applicable to officers. It is not possible to place any reliance on these documents. If the petitioner satisfies the definition of workman, as in Section 2(s) of the Act, the fact, that he waived his rights as a workman, would not stand in the way of his being treated as a workman. But the matter does not rest upon Exts. M/32 and 33 alone. There is considerable body of evidence, which has been referred to above, which leads to the conclusion, that the petitioner is not a workman. I find, that the petitioner is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act.

30. In view of the fact, that the petitioner was not a workman, the management of the Bank were under no obligation to follow the procedure prescribed in Section 33(2)(b) of the Industrial Disputes Act. It was not incumbent upon them to file a petition under Section 33(2)(b), for approval or to pay one month's wages to the petitioner on dismissal. Therefore, there is no contravention of Section 33(2)(b) in any manner whatsoever. In the absence of contravention of Section 33, this petition under Section 33A does not lie, and this Court has no jurisdiction to proceed with the same. I find accordingly.

#### **Issues No. 5 & 6.**

31. In view of my finding, as above, the various points, relating to the merits of the dispute, and the alleged wrongful character of the dismissal, do not arise for determination, and cannot be decided herein.



Issue No. 7.

32. In view of the fact, that the petition is not maintainable, the petitioner is not entitled to any relief.

33. In the result, the petition is dismissed, as not being maintainable. There is no order as to costs.

34. An award is passed accordingly.

(Eleven pages)

(Sd.) E. KRISHNA MURTI,

25th July, 1961.

Central Government Labour Court, Delhi.

[No. 55(14)61-I.L.R.IV.]

**S.O. 1975.**—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Labour Court, Delhi, in the matter of applications under section 33A of the said Act from certain employees of the State Bank of Jaipur.

**BEFORE THE PRESIDING OFFICER, CENTRAL GOVT. LABOUR COURT AT DELHI**

**PRESENT:**

Shri E. Krishna Murti, Central Govt. Labour Court, Delhi.

29th July, 1961.

**APPLICATION U/S. 33A of the Industrial Disputes Act, 1947.**

I.D. Nos. 27, 46, 49, 50, 51, & 52, of 1961.

I.D. No. 27 of 1961 Shri R. L. Khandelwal,

I.D. No. 46 of 1961 Shri Nanoo Lal Jain.

I.D. No. 49 of 1961 Shri Ratan Lal Jain,

I.D. No. 50 of 1961 Shri R. S. Kachhawa,

I.D. No. 51 of 1961 Shri M. L. Tanwar,

I.D. No. 52 of 1961 Shri Jugal Kishore Pande, Employee, State Bank of Jaipur, II/o. Jaipur, C/o. The All India Bank Employees' Association, Camp, Khandelwal Bhuvan, Fort, Bombay-1—Applicants.

**Vs.**

The State Bank of Jaipur, H.O. Jaipur—*Opposite Party.*

Shri S. L. Kothari *for the management.*

Shri Dayal Das *for the workmen.*

In the matter of Ref. No. 1 of 1960, pending before the National Industrial Tribunal (Bank Dispute) Bombay-1.

### AWARD

These several petitioners have all been filed under Section 33A of the Industrial Disputes Act

2. The allegations in the several petitions are to the effect that the several petitioners have been working in the State Bank of Jaipur, the opposite party herein, that they were all senior employees of the State Bank, working at the Head Office, that they were governed by the provisions of the Sastry Award, which is binding on both the parties, that rules for promotion for higher posts from the rank of clerks are laid down in paragraph 529 of the Sastry Award, that there is also a provision therein in paragraph 164(b)(ix) of the Sastry Award for payment of special allowance to employees for performing the duties of supervisors, sub-accountants, departmental incharges, etc., that during the pendency of the dispute before the National Tribunal the respondent-bank issued circular No. 39 dated 16th July, 1960, laying down fresh rules for promotion, which are prejudicial to the workmen, that the introduction of this circular introduced an alteration in the conditions of service, which are prejudicial to the several petitioners, that the opposite party has not followed the provisions of the Sastry Award in the matter of promotion, that a number of workmen, who are junior to the several petitioners, have been promoted in complete disregard of the

provisions of the Sastry Award, that by giving effect to the provisions of the Circular, No. 39, and effecting promotions in accordance therewith, the promotion of the several petitioners has been prejudicially affected, without any remedy being available to them, that accordingly it is prayed, that the change in service conditions introduced by Circular No. 39 should be declared invalid, that all the promotions made thereunder should be set aside, and that the Bank should be directed to follow the procedure prescribed in the Sastry Award, regarding promotions, and effect promotions of the several petitioners in accordance therewith.

3. The contention on behalf of the Bank, in all the petitions, is, that there has been no contravention of the provisions of Section 33 of the Industrial Disputes Act, that the several complaints are mis-conceived, that this Court has no jurisdiction to entertain these petitions, that no occasion exists for the filing of complaints under Section 33A of the Industrial Disputes Act, that, with reference to the merits, the Bank admits the circular No. 39 dated 16th July, 1960, laying down rules for promotion, that the question of promotion is entirely within the discretion of the Bank, that the rules contained in the circular are not prejudicial to the workmen, that there has been no alteration to the prejudice of the workmen in their conditions of service, that there is no question of setting aside the promotions already made, or declaring, that the circular has affected any prejudicial change in the service conditions, and that the workmen are not entitled to any relief.

4. The issues, that arise for determination in the several petitions, are:—

- (1) Whether there is a contravention of Section 33 of the Industrial Disputes Act?
- (2) Whether these several applications are entertainable, and whether this Labour Court has jurisdiction to proceed with the same under Section 33A of the Industrial Disputes Act?
- (3) Whether Circular No. 39, now complained of, has brought about an alteration in the conditions of service to the prejudice of the workmen?
- (4) Whether the promotions, that have already been made by the management are liable to be set aside?
- (5) Whether the several workmen are entitled to be promoted in accordance with the rules laid down in the Sastry Award?
- (6) To what relief, if any, are the several petitioners entitled?

#### *Issues No. 1 and 2.*

5. This six petitions have been preferred under Section 33A of the Industrial Disputes Act, by certain employees of the State Bank of Jaipur, working at the Head Office at Jaipur.

6. All these several petitions have been heard together, and the common evidence has been marked and adduced in I.D. No. 27 of 1961, and the said evidence has been treated as common in all the several petitions at the request of parties, and these petitions are disposed of by a common judgment at the request of parties.

7. According to the case of the several petitioners, they are all senior employees of the State Bank of Jaipur. Ext. W/12 has been filed to show the length of service of each of the respective petitioners. Among these, Shri R. L. Khandelwal is shown as having put in service of 12 years, and the others from 14 to 15 years. The complaint of the several petitioners in all the petitions is, that they have been superseded in the matter of promotion to higher posts in the Bank, that the management introduced a circular, namely, circular No. 39 dated 16th July, 1960, copy of which is Ext. W/1, that the management effected promotions in accordance with the said circular, that Ext. W/1 has brought about an alteration in the conditions of service of the several petitioners in the matter of promotion to their prejudice, that such alteration in service conditions is untenable, that the Bank, in utter dis-regard of the conditions regarding promotion, as contained in the Sastry Award, has effected promotions in accordance with the circular, and that, as a result, persons, who are very much junior to the several petitioners have been promoted to higher cadre in the Bank service. Ext. W/3 has been filed to show, that persons, with even 6 or 7 years of service have been promoted over the heads of the several petitioners, in accordance with circular No. 39. Thus the contention on behalf of the several petitioners is, that

the circular No. 39 brings about a material and prejudicial change in the conditions of service, that their emoluments have been adversely affected as shown in Ext. W/2, that their seniority has been over-looked, and that the said circular has affected them prejudicially in more ways than one, as has been repeatedly brought to the notice of the management as seen from the letters, Exts. W/4, 6, and 7. It is prayed in these petitions, that the change in the service conditions introduced by Circular No. 39 dated 18th July, 1960 be declared invalid, that all promotions made thereunder be set aside, and that the Bank may be directed to promote the several petitioners in accordance with the directions in the Sastry Award.

8. At the outset, on behalf of the Bank, the preliminary objection has been raised, that the petitions, as brought, are not maintainable, and this Court has no jurisdiction to entertain the same, or enquire into the same. As has been repeatedly laid down, unless there is a contravention of Section 33, no petition can lie under Section 33A. The remedy given under Section 33A cannot be availed of unless there is a breach of Section 33. Even as the opening words of Section 33 show, in the absence of contravention of Section 33, this Court will have no jurisdiction to entertain an application under Section 33A. It has been laid down in the decision in *Equitable Coal Limited Vs. Algu Singh and another* (1958 1 LLJ 793) at page 795 by the Supreme Court, dealing with applications under Sections 22 and 23 of the Industrial Disputes (Appellate Tribunal) Act, (corresponding to Sections 33 and 33A of the Industrial Disputes Act), that in an application under Section 23 two questions fall to be considered; viz. is the fact of contravention by the employer of the provisions of Section 22 proved? If yes, is the order passed by the employer against the employee justified on the merits? If both these questions are answered in favour of the employee, an appropriate order would be made in his favour. If the first point is answered in favour of the employee, but not the second, the order passed by the employer against the employee would be held to be justified, and the non-compliance with Section 22 would be dealt with as a technical breach. It is expressly observed by the Supreme Court as follows:—

"It is unnecessary to add, that if the first issue is answered against the employee, nothing further can be done under Section 23."

In the decision in *Central Bank of India Ltd. Vs. Meenakshisundaram* (1959 1 LLJ 446), it is expressly made clear, that the question, that arises is one of jurisdiction. It is observed as follows by the Supreme Court at page 449:—

"As the respondent's services had not ended during the period stated in Section 22, it is clear, that the provisions of that section did not apply. Since the provisions of Section 22 did not apply, the petition filed by the respondent under Section 23 was mis-conceived, and the tribunal had no jurisdiction to entertain it."

Therefore, unless the petitioners succeed in proving, that there is contravention of Section 33 of the Industrial Disputes Act, these several petitions cannot be entertained by this Court, and this Court would have no jurisdiction to deal with the same.

9. Thus it falls to be determined, whether there is contravention of Section 33 of the Industrial Disputes Act? In the first place, the contention on behalf of the several petitioners is, that there is contravention of Section 33(1) because the Bank did not obtain previous permission to effect the change in the conditions of service. It is important to note, that in the Sastry Award, the provisions regarding promotions are contained in paragraph 529. The case of the workmen is, that circular No. 39 radically and materially brings about a change in the conditions laid down in the Sastry Award, regarding promotions, and that this operates to their prejudice. I shall assume for the purpose of argument, that the said circular does bring about a material change in the service conditions of workmen, regarding promotions applicable to them. Immediately before the reference to the National Tribunal, i.e. the conditions as laid down in the Sastry Award. I shall also assume, that the said service conditions introduced by circular No. 39 operate to the prejudice of the workmen concerned. But I fail to see, how Section 33(1) can apply to the facts of this case, or how the management were bound to obtain previous permission in writing of the authority before which the proceeding was pending to introduce the Circular No. 39. It is laid down in Section 33(1)(a), that no employer shall in regard to any matter connected with the dispute, alter to the prejudice of the workmen concerned, the conditions of service applicable to them immediately before the commencement

of the proceeding. It is conceded before me, that Section 33(1)(b) does not apply to the facts of this case. Emphasis is laid on the words in regard to "any matter connected with the dispute" in Section 33(1)(a). What is contended before me by Shri Dayal Das for the workmen is, that the prejudicial change has been brought about in connection with the conditions of service regarding promotions of employees, as a result of circular No. 39, that the question of promotion is one of the matters in issue pending before the National Tribunal, and that, therefore, the prejudicial change is in regard to a matter connected with the dispute. A perusal of the items of reference before the National Tribunal will show, that there is no question regarding promotions, that is the subject-matter of reference. But it is contended by Shri Dayal Das, that the question of promotion is impliedly referred to in Item No. 12. Item No. 12 of the reference, as contained in the Notification of the Ministry of Labour and Employment dated March 21, 1960, is as follows:—

"Need for maintenance of seniority lists."

I am unable to hold, that the matter now complained of is impliedly connected with the Item of dispute in Item No. 12. By no stretch of imagination, can it be said, that the said Item of reference deals with the question of promotion. Nextly attention is drawn to the residual Item of reference No. 22, which is in the following terms:—

"Any other question connected with, or arising out of, the foregoing matters."

It is expressly laid down, that the questions contemplated therein are those arising out of the foregoing, i.e. in Item Nos. 1—21. It is difficult to sustain the contention on behalf of the several petitioners, that the alleged change in service conditions has been brought about in regard to any matters connected with the dispute. It is clear, that Section 33(1)(a) has no application to the facts of the case. It follows, that the Bank were not bound to apply for previous permission for introducing Circular No. 39. There is no contravention of Section 33(1) in any manner whatsoever.

11. The next contention raised before me is, that in any case there is contravention of Section 33(2). Section 33(2)(a) lays down, that no employer shall alter in regard to any matter not connected with the dispute, the conditions of service applicable to the workmen immediately before the commencement of the proceeding. There is a proviso to the effect, that no workman shall be discharged, or dismissed unless he has been paid wages for one month, and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer. What is contended before me is, that no petition for approval of the action taken by the management was filed before the National Tribunal, that, therefore, this amounts to contravention of Section 33, and that, therefore, the several petitions are maintainable. This contention is untenable. Granting, that Circular No. 39 introduces a change in regard to the rules and conditions applicable in the matter of promotion of employees, and that it operates to their prejudice, still the management were under no obligation to file an application for approval under the proviso to Section 33(2), because such an application for approval is necessary only in case of discharge or dismissal for mis-conduct, not connected with the dispute. It is in such cases, that the management are bound to apply for approval under Section 33(2)(b) proviso, and also pay the affected workmen one month's wages. That the proviso is not applicable to action taken under Section 33(2)(a) is clear from the decision of the Supreme Court in *Lord Krishna Textile Mills* (1961 I LLJ 211). It is laid down at page 215 as follows:—

"In dealing with cases falling under S. 33(2) the industrial authority will be entitled to enquire whether the proposed action is in accordance with the standing orders, whether the employee concerned had been paid wages for one month, and whether an application has been made for approval as prescribed by the said sub-section. It is obvious that in cases of alteration of conditions of service falling under S. 33(2)(a) no such approval is required and the right of the employer remains un-affected by any ban."

Therefore, in effecting any charge in accordance with Circular No. 39, the management were under no obligation to file a petition for approval, as contemplated in the proviso to Section 33(2)(b). In this view also there is no contravention of Section 33.

12. The contention is however raised, that Section 33(3) applies to the facts of the present cases, and that, therefore, previous permission should have been obtained, and that the lack of such permission amounts to contravention of Section 33. Section 33(3) lays down the procedure to be followed in case of "protected workmen." There is prohibition against altering the conditions of service applicable to them before the reference, or discharging, or punishing them, whether by dismissal or otherwise, save with the express permission in writing of the authority before whom the proceeding is pending. But the explanation to that section is important, and it is as follows:—

"For the purpose of this sub-section, a 'protected' workman, in relation to an establishment, means a workman who, being an officer of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf."

Sub-section (4) lays down the manner, in which recognition should be given to protected workmen.

13. From the evidence, that has been adduced in the enquiry, it is clear, that only two persons, WW1, Shri R. L. Khandelwal, the petitioner in I.D. No. 27 of 1961, and WW2, Shri Mohan Lal Tanwar, the petitioner in I.D. No. 51 of 1961, are office bearers of the union. WW1, Shri Khandelwal says, that he is the General Secretary of the Rajasthan Bank Employees' Union, and the evidence of WW2 is, that he is the President of the Union. The evidence of the witnesses does not disclose, that the other petitioners are office bearers of the Union. The petitioners, with the exception of Sarvashri R. L. Khandelwal, and M. L. Tanwar, cannot be treated as protected workmen, and Section 33(3) has no application to them.

14. Taking the case of Sarvashri R. L. Khandelwal and M. L. Tanwar, they are no doubt the General Secretary and President of the Rajasthan Bank Employees' Union. But the evidence on record does not establish, that they are "protected workmen" within the meaning of the Explanation as set out above. To attract this Section, they must not only be officers of a registered trade union, connected with the establishment, but must have been recognised as such in accordance with the rules made in this behalf. Sub-Section (4) contains provisions, regarding protected workman and rules to be made by the appropriate Government for distribution of such protected workmen among various trade Unions, if any, connected with the establishment, and the manner in which the workmen may be chosen and recognised, as protected workmen. Rule 61 is as follows:—

"61. PROTECTED WORKMEN.—(1) Every registered trade union connected with an industrial establishment, to which the Act applies, shall communicate to the employer before the 30th September every year, the names and addresses of such of the officers of the union who are employed in that establishment and who, in the opinion of the Union, should be recognised as "protected workmen". Any change in the incumbency of any such officer shall be communicated to the employer by the union within fifteen days of such change.

(2) The employer shall subject to section 33 sub-section (4), recognise such workmen to be "protected workmen" for the purposes of sub-section (3) of the said section and communicate to the union, in writing, within fifteen days of the receipt of the names and addresses under sub-rule (1), the list of workmen recognised as protected workmen..."

There is no material on record to prove, that the provisions of this rule have been complied with, or that the names of Sarvashri Khandelwal and Tanwar were communicated to the management of the Bank, as protected workmen of the establishment, or that they were recognised as protected workmen in the manner prescribed. In these circumstances, these two workmen cannot be treated as protected workmen, as cannot claim the benefit of the procedure prescribed in Section 33(3). The management were under no obligation to obtain previous permission to effect the change in the conditions of service, and for introduction of circular No. 39.

15. On a consideration of all circumstances, I am of opinion, that there is no contravention of Section 33 sub-sections (1), (2) and (3) of the Industrial Disputes Act in any manner whatsoever. In the absence of such contravention, these several petitions under Section 33A are not maintainable. This Court has no jurisdiction to entertain the same, or to adjudicate upon the same. I find, that there is no contravention of Section 33 in respect of all the several petitions,

that all the petitions are not maintainable under Section 33A, and that this Labour Court has no jurisdiction to deal with the same.

*Issues No. 3, 4 and 5.*

16. In view of the fact, that this Court has no jurisdiction to entertain the several petitions, no questions regarding merits of the dispute can be dealt with in these petitions. Accordingly, all questions, regarding the merits of the dispute, are left open, and are not decided herein.

*Issue No. 6.*

17. In view of the fact, that this Court has no jurisdiction to deal with the several petitions, and that they are not maintainable, the petitioners are not entitled to any relief. They have mis-conceived their remedy by filing these petitions under Section 33A. Their obvious remedy is to have an industrial dispute raised, and have it referred by the appropriate Government to the concerned Industrial Tribunal. I find, that the petitioners are not entitled to any relief in these petitions, as they are not maintainable.

18. In the result, the petitions are dismissed, as they are not maintainable under Section 33A. No order as to costs.

19. An award is passed in each of these petitions, accordingly.

(Eleven pages)

29th July, 1961.

E. KRISHNA MURTI,

Central Govt. Labour Court: Delhi.

[No. 55(14)/61-II-LRIV]

#### ORDER

*New Delhi, the 11th August 1961*

**S.O. 1976.**—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Bank of Behar Limited and their workmen in respect of the matter specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

#### SCHEDULE

Whether having regard to the duties performed by him, Shri Mahendra Prasad is entitled to any special allowance under paragraph 164(b) of the Award of the All India Industrial Tribunal (Bank Disputes) as modified by the decision of the Appellate Tribunal in the manner referred to in section 3 of the Industrial Disputes (Banking Companies) Decision Act, 1955 and if so, how much and from what date?

[No. 10(68)/60-LRIV.]

G. JAGANNATHAN, Under Secy.

*New Delhi, the 14th August 1961*

**S.O. 1977.**—In pursuance of clause (c) of sub-paragraph (1) of paragraph 4 of the Employees' Provident Funds Scheme, 1952, the Central Government hereby nominates Shri N. G. Bowen as a member of the Regional Committee for the State of Madras in the vacancy caused by the resignation of Shri M. J. Edwards, and makes the following further amendment in the notification of the Government of India in the late Ministry of Labour, No. S.R.O. 3381, dated the 2nd November, 1954, namely:—

In the said notification, for entry (6), the following entry shall be substituted, namely:—

“(6) Shri N. G. Bowen, C/o M/s. Parry & Co. Ltd.,  
Dare House, Madras”

[No. 10(7)/60-PF. II.]

P. D. GAIHA, Under Secy.